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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

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TITLE 31

HEALTH

CHAPTER 1

GENERAL PROVISIONS; ACCESS TO EYE CARE

ARTICLE 3

GEORGIA HEALTH CARE FREEDOM

Effective date. — This Article became effective April 15, 2014.

31-1-40. Prohibition on expenditure or use of state resources to advocate for or intended to influence citizens in support of federal Affordable Care Act.

(a) Neither the state nor any department, agency, bureau, authority, office, or other unit of the state nor any political subdivision of the state shall expend or use moneys, human resources, or assets to advocate or

intended to influence the citizens of this state in support of the voluntary expansion by the State of Georgia of eligibility for medical assistance in furtherance of the federal "Patient Protection and Affordable Care Act," Public Law 111-148, beyond the eligibility criteria in effect on April 15, 2014, under the provisions of 42 U.S.C. Section 1396a(a)(10)(A)(i)(VIII) of the federal Social Security Act, as amended.

(b) The Attorney General shall enforce the provisions of this Code section in accordance with Article V, Section III, Paragraph IV of the Constitution of the State of Georgia.

(c) Nothing in this Code section shall be construed to prevent an officer or employee of the State of Georgia or of any department, agency, bureau, authority, office, unit, or political subdivision thereof from advocating or attempting to influence public policy:

(1) As part of such person's official duties;

(2) When acting on personal time without using state resources; or

(3) When providing bona fide educational instruction about the federal Patient Protection and Affordable Care Act of 2010 in institutions of higher learning or otherwise.

(d) Nothing in this Code section shall be construed to preclude the state from participating in any MEDICAID program. (Code 1981, § 31-1-40, enacted by Ga. L. 2014, p. 243, § 1-2/HB 943.)

Effective date. — This Code section became effective April 15, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, "April 15, 2014," was substituted for "the effective date of this Code section" near the end of subsection (a).

Editor's notes. — Ga. L. 2014, p. 243, § 1-1/HB 943, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Health Care Freedom Act.'"

CHAPTER 2

DEPARTMENT OF COMMUNITY HEALTH

tions; eligibility; requirements; evaluation report on two-year pilot program.

31-2-1. Legislative intent; grant of authority.

JUDICIAL DECISIONS

Case by case regulation rendered unconstitutionally vague. — In a competitor's appeal of the issuance of a Certificate of Need (CON) to a hospital, a trial court properly reversed the grant of the CON by the Georgia Department of Community Health because the case-by-case provision in Ga. Comp. R. & Regs. 111-2-2-.40(1)(a) was unconstitutionally vague since the regulation lacked ascertainable standards and specific guidelines to limit the Department's discretion. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 324 Ga. App. 326, 750 S.E.2d 401 (2013).

Georgia Department of Community Health's failure to include ascertainable standards in its regulation to guide the case-by-case determination to issue a Certificate of Need set forth in Ga. Comp. R. & Regs. 111-2-2-.40(1)(a) improperly gave the Department uncontrolled discretion and, therefore, rendered the regulation unconstitutionally vague. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 324 Ga. App. 326, 750 S.E.2d 401 (2013).

31-2-4. Department's powers, duties, functions, and responsibilities; divisions; directors; contracts for health benefits.

(a)(1)(A) The Department of Community Health is re-created and established to perform the functions and assume the duties and powers exercised on June 30, 2009, by the Department of Community Health, the Division of Public Health of the Department of Human Resources, and the Office of Regulatory Services of the Department of Human Resources, unless specifically transferred to the Department of Human Services, and such department, division, and office shall be reconstituted as the Department of Community Health effective July 1, 2009. The department shall retain powers and responsibility with respect to the expenditure of any funds appropriated to the department including, without being limited to, funds received by the state pursuant to the settlement of the lawsuit filed by the state against certain tobacco companies, *State of Georgia, et al. v. Philip Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton County Superior Court, December 9, 1998).

(B) On and after July 1, 2011, the functions, duties, and powers of the Department of Community Health relating to the former Division of Public Health of the Department of Human Resources shall be performed and exercised by the Department of Public Health pursuant to Code Section 31-2A-2. No power, function, responsibility, duty, or similar authority held by the Department of

Community Health as of June 30, 2009, shall be diminished or lost due to the creation of the Department of Public Health.

(2) The director of the Division of Public Health in office on June 30, 2009, and the director of the Office of Regulatory Services in office on June 30, 2009, shall become directors of the respective division or office which those predecessor agencies or units have become on and after July 1, 2009, and until such time as the commissioner appoints other directors of such divisions or units. The position of director of the Division of Public Health shall be abolished effective July 1, 2011.

(b) Reserved.

(c) The Board of Regents of the University System of Georgia is authorized to contract with the department for health benefits for members, employees, and retirees of the board of regents and the dependents of such members, employees, and retirees and for the administration of such health benefits. The department is also authorized to contract with the board of regents for such purposes.

(d) In addition to its other powers, duties, and functions, the department:

(1) Shall be the lead agency in coordinating and purchasing health care benefit plans for state and public employees, dependents, and retirees and may also coordinate with the board of regents for the purchase and administration of such health care benefit plans for its members, employees, dependents, and retirees;

(2) Is authorized to plan and coordinate medical education and physician work force issues;

(3) Shall investigate the lack of availability of health insurance coverage and the issues associated with the uninsured population of this state. In particular, the department is authorized to investigate the feasibility of creating and administering insurance programs for small businesses and political subdivisions of the state and to propose cost-effective solutions to reducing the numbers of uninsured in this state;

(4) Is authorized to appoint a health care work force policy advisory committee to oversee and coordinate work force planning activities;

(5) Is authorized to solicit and accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out its functions and purposes;

(6) Is authorized to award grants, as funds are available, to hospital authorities, hospitals, and medical-legal partnerships for

public health purposes, pursuant to Code Sections 31-7-94 and 31-7-94.1 and paragraph (11) of this subsection;

(7) Shall make provision for meeting the cost of hospital care of persons eligible for public assistance to the extent that federal matching funds are available for such expenditures for hospital care. To accomplish this purpose, the department is authorized to pay from funds appropriated for such purposes the amount required under this paragraph into a trust fund account which shall be available for disbursement for the cost of hospital care of public assistance recipients. The commissioner, subject to the approval of the Office of Planning and Budget, on the basis of the funds appropriated in any year, shall estimate the scope of hospital care available to public assistance recipients and the approximate per capita cost of such care. Monthly payments into the trust fund for hospital care shall be made on behalf of each public assistance recipient and such payments shall be deemed encumbered for assistance payable. Ledger accounts reflecting payments into and out of the hospital care fund shall be maintained for each of the categories of public assistance established under Code Section 49-4-3. The balance of state funds in such trust fund for the payment of hospital costs in an amount not to exceed the amount of federal funds held in the trust fund by the department available for expenditure under this paragraph shall be deemed encumbered and held in trust for the payment of the costs of hospital care and shall be rebudgeted for this purpose on each quarterly budget required under the laws governing the expenditure of state funds. The state auditor shall audit the funds in the trust fund established under this paragraph in the same manner that any other funds disbursed by the department are audited;

(8) Shall classify and license community living arrangements in accordance with the rules and regulations promulgated by the department for the licensing and enforcement of licensing requirements for persons whose services are financially supported, in whole or in part, by funds authorized through the Department of Behavioral Health and Developmental Disabilities. To be eligible for licensing as a community living arrangement, the residence and services provided must be integrated within the local community. All community living arrangements licensed by the department shall be subject to the provisions of Code Sections 31-2-8 and 31-7-2.2. No person, business entity, corporation, or association, whether operated for profit or not for profit, may operate a community living arrangement without first obtaining a license or provisional license from the department. A license issued pursuant to this paragraph is not assignable or transferable. As used in this paragraph, the term "community living arrangement" means any residence, whether operated for profit or not, which undertakes through its ownership or management to

provide or arrange for the provision of housing, food, one or more personal services, support, care, or treatment exclusively for two or more persons who are not related to the owner or administrator of the residence by blood or marriage;

(9) Shall establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for licensure activities for institutions and other health care related entities required to be licensed, permitted, registered, or commissioned by the department pursuant to Chapter 7, 13, 23, or 44 of this title, Chapter 5 of Title 26, paragraph (8) of this subsection, or Article 7 of Chapter 6 of Title 49. Such schedules shall be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such licensure activities. Such fees may be annually adjusted by the department but shall not be increased by more than the annual rate of inflation as measured by the Consumer Price Index, as reported by the Bureau of Labor Statistics of the United States Department of Labor. All fees paid thereunder shall be paid into the general funds of the State of Georgia. It is the intent of the General Assembly that the proceeds from all fees imposed pursuant to this paragraph be used to support and improve the quality of licensing services provided by the department;

(10)(A) May accept the certification or accreditation of an entity or program by a certification or accreditation body, in accordance with specific standards, as evidence of compliance by the entity or program with the substantially equivalent departmental requirements for issuance or renewal of a permit or provisional permit, provided that such certification or accreditation is established prior to the issuance or renewal of such permits. The department may not require an additional departmental inspection of any entity or program whose certification or accreditation has been accepted by the department, except to the extent that such specific standards are less rigorous or less comprehensive than departmental requirements. Nothing in this Code section shall prohibit either departmental inspections for violations of such standards or requirements or the revocation of or refusal to issue or renew permits, as authorized by applicable law, or for violation of any other applicable law or regulation pursuant thereto.

(B) For purposes of this paragraph, the term:

(i) "Entity or program" means an agency, center, facility, institution, community living arrangement, drug abuse treatment and education program, or entity subject to regulation by the department under Chapters 7, 13, 22, 23, and 44 of this title; Chapter 5 of Title 26; paragraph (8) of this subsection; and Article 7 of Chapter 6 of Title 49.

(ii) "Permit" means any license, permit, registration, or commission issued by the department pursuant to the provisions of the law cited in division (i) of this subparagraph; and

(11)(A) Is authorized to approve medical-legal partnerships that comply with standards and guidelines established for such programs for purposes of determining eligibility for grants. The department shall seek input from legal services organizations, community health advocacy organizations, hospitals, diagnostic and treatment centers, and other primary and specialty health care providers in establishing such standards and guidelines.

(B) For purposes of this paragraph, the term "medical-legal partnership" means a program conducted or established by a nonprofit entity through a collaboration pursuant to a written agreement between one or more medical service providers and one or more legal services programs, including those based within a law school, to provide legal services without charge to assist income-eligible individuals and their families in resolving legal matters or other needs that have an impact on the health of such individuals and families. Written agreements may include a memorandum of understanding or other agreement relating to the operations of the partnership and encompassing the rights and responsibilities of each party thereto. The medical service provider or providers may provide referrals of its patients to the legal services program or programs on matters that may potentially impact the health, health care, or the health care costs of a patient.

(C) A medical-legal partnership that complies with the standards and guidelines established pursuant to this paragraph and has demonstrated the ability and experience to provide high quality patient centered legal services regarding legal matters or other needs that have an impact on the health of individuals and families shall be approved by the department.

(D) This paragraph shall not be construed to require any medical-legal partnership or similar entity to seek or attain approval pursuant to this paragraph in order to operate. (Code 1981, § 31-5A-4, enacted by Ga. L. 1999, p. 296, § 1; Ga. L. 2001, p. 1240, § 1; Ga. L. 2002, p. 1132, § 1; Ga. L. 2002, p. 1324, § 1-4; Code 1981 § 31-2-4, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 1014, § 1/HB 994; Ga. L. 2011, p. 705, § 4-2/HB 214; Ga. L. 2014, p. 397, § 1/SB 352.)

The 2014 amendment, effective July 1, 2014, in paragraph (d)(6), substituted "hospital authorities, hospitals, and medical-legal partnerships" for "hospital authorities and hospitals" and added "and paragraph (11) of this subsection"; deleted

"and" at the end of paragraph (d)(9); added "and" at the end of division (d)(10)(B)(ii); and added paragraph (d)(11).

31-2-9. Records check requirement for certain health care facilities; definitions; use of information gathered in investigation; penalties for unauthorized release or disclosure; rules and regulations.

(a) As used in this Code section, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of the following offenses:

(A) A violation of Code Section 16-5-1;

(B) A violation of Code Section 16-5-21, relating to aggravated assault;

(C) A violation of Code Section 16-5-24, relating to aggravated battery;

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

(E) A violation of Article 8 of Chapter 5 of Title 16;

(F) A violation of Code Section 16-6-1, relating to rape;

(G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(H) A violation of Code Section 16-6-4, relating to child molestation;

(I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

(K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

(L) A violation of Code Section 16-8-41;

(M) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere; or

(N) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Facility" means a:

(A) Personal care home required to be licensed or permitted under Code Section 31-7-12;

(B) Assisted living community required to be licensed under Code Section 31-7-12.2;

(C) Private home care provider required to be licensed under Article 13 of Chapter 7 of this title; or

(D) Community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "License" means the document issued by the department to authorize the facility to operate.

(8) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) "Records check application" means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify

the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department's determination regarding an owner's criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) Neither the GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a

license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of Title 49 or Article 11 of Chapter 7 of this title.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section. (Code 1981, § 31-2-14, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2010, p. 878, § 31/HB 1387; Ga. L. 2011, p. 227, § 10/SB 178; Code 1981, § 31-2-9, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214; Ga. L. 2012, p. 351, § 2/HB 1110; Ga. L. 2013, p. 524, § 3-2/HB 78; Ga. L. 2014, p. 444, § 2-8/HB 271.)

The 2013 amendment, effective July 1, 2013, rewrote subparagraph (a)(2)(E); substituted "or" for ", relating to armed robbery" at the end of subparagraph (a)(2)(L); deleted former subparagraph (a)(2)(M), which read: "A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person;"; and redesignated former subparagraph (a)(2)(N) as present subparagraph (a)(2)(M).

The 2014 amendment, effective July 1, 2014, deleted ", relating to murder and felony murder" following "Code Section 16-5-1" at the end of subparagraph (a)(2)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, "or" was deleted at the end of subparagraph (a)(2)(L); "; or" was substituted for a period at the end of subparagaraph (a)(2)(M); and subparagraph (a)(2)(O) was redesignated as subparagraph (a)(2)(N).

31-2-12. (For effective date, see note.) Pilot program to provide coverage for bariatric surgical procedures for treatment of obesity and related conditions; definitions; eligibility; requirements; evaluation report on two-year pilot program.

(a) As used in this Code section, the term "state health insurance plan" means:

(1) The state employees' health insurance plan established pursuant to Article 1 of Chapter 18 of Title 45;

(2) The health insurance plan for public school teachers established pursuant to Subpart 2 of Part 6 of Article 17 of Chapter 2 of Title 20; and

(3) The health insurance plan for public school employees established pursuant to Subpart 3 of Part 6 of Article 17 of Chapter 2 of Title 20.

(b) Beginning six months after the effective date of this Code section, the department shall conduct a two-year pilot program to provide coverage for the treatment and management of obesity and related conditions under a state health insurance plan. The pilot program will provide benefits for medically necessary bariatric procedures for participants selected for inclusion in the pilot program.

(c) Participation in the pilot program shall be limited to no more than 75 individuals per year, to be selected in a manner determined by the department. Any person who has elected coverage under a state health insurance plan shall be eligible to be selected to participate in the pilot program in accordance with criteria established by the department which shall include, but not be limited to:

(1) Participation in a state health insurance plan for at least 12 months;

(2) Completion of a health risk assessment through a state health insurance plan;

(3) A body mass index of:

(A) Greater than 40; or

(B) Greater than 35 with one or more co-morbidities such as diabetes, hypertension, gastro-esophageal reflux disease, sleep apnea, or asthma;

(4) Consent to provide personal and medical information to a state health insurance plan;

(5) Non-tobacco user;

(6) No other primary group health coverage or primary coverage with Medicare; and

(7) Must have been covered under a state health insurance plan for two years immediately prior to the pilot program and must express an intent to continue coverage under such state health insurance plan for two years following the approved surgical procedure date.

(d) Eligible individuals must apply to participate in the pilot program. The individual and his or her physician shall complete and submit an obesity treatment program application to the department no later than February 1 for each year of the pilot program. The department's contracted health insurance carrier shall review the criteria contained in subsection (c) of this Code section to determine qualified applicants for the pilot program.

(e) The selected participants shall be eligible to receive a multi-disciplinary health evaluation at a facility located within the State of Georgia which is designated by the American Society for Metabolic and Bariatric Surgery as a Bariatric Surgery Center of Excellence. The bariatric surgical procedures covered in the pilot program are:

(1) Gastric band;

(2) Laparoscopic sleeve gastrectomy; and

(3) Rouen-Y gastric bypass.

The participants shall use the department's contracted health insurance carrier to enroll in a case management program and to receive prior authorization for a surgical procedure provided pursuant to the pilot program. The health insurance carrier shall provide case management and patient follow-up services. Benefits for a bariatric surgical procedure under the pilot program shall be provided only when the surgical procedure is performed at a Center of Excellence within the State of Georgia.

(f) All health care services provided pursuant to the pilot program shall be subject to the health insurance carrier's plan of benefits and policy provisions. Complications that arise after the discharge date are subject to the health insurance carrier's plan of benefits and policy provisions.

(g) Participants must agree to comply with any and all terms and conditions of the pilot program including, but not limited to, participation and reporting requirements. Participation requirements shall include a 12 month postsurgery case management program. Each participant must also agree to comply with any and all requests by the department for postsurgical medical and productivity information, and such agreement shall survive his or her participation in a state health insurance plan.

(h) A panel shall review the results and outcomes of the pilot program beginning six months after program initiation and shall conduct subsequent reviews every six months for the remainder of the pilot program. The panel shall be composed of the following members, appointed by the Governor:

(1) A representative of a state health insurance plan;

(2) A representative of the state contracted health insurance carrier or carriers providing coverage under the pilot program; and

(3) At least two physicians who carry a certification by the American Society for Metabolic and Bariatric Surgery.

(i) The department shall provide a final report by December 15 of the last year of the pilot program to the chairpersons of the House Committee on Health and Human Services, the Senate Health and Human Services Committee, the House Committee on Appropriations, and the Senate Appropriations Committee. The report shall include, at a minimum:

(1) Whether patients in the pilot have experienced:

(A) A reduction in body mass index, and if so, the average amount of reduction; or

(B) The reduction or elimination of co-morbidities, and if so, which co-morbidities were reduced or eliminated;

(2) The total number of individuals who applied to participate in the pilot program;

(3) The total number of participants who enrolled in the pilot program;

(4) The average cost of each procedure conducted under the pilot program, including gastric band, laparoscopic sleeve gastrectomy, and Rouen-Y gastric bypass;

(5) The total cost of each participant's annual health care costs prior to the surgical procedure and for each of the subsequent post-procedure years for the three years following the surgical procedure; and

(6) The percentage of participants still employed by the state 12 months following the surgical procedure and 24 months following the surgical procedure, respectively.

(j) This Code section shall stand repealed 42 months after the effective date of such Code section. (Code 1981, § 31-2-12, enacted by Ga. L. 2014, p. 172, § 1/HB 511.)

Delayed effective date. — Ga. L. 2014, p. 172, § 2/HB 511, provides that this Code section becomes effective only upon the effective date of a specific appropriation of funds for purposes of this Act as expressed in a line item making specific reference to such Act in a General Appropriations Act enacted by the General Assembly. Funds were not appropriated at the 2014 session of the General Assembly.

Editor's notes. — This Code section formerly pertained to standards for sewage management systems and was redesignated as Code Section 31-2A-11 by Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011.

CHAPTER 2A

DEPARTMENT OF PUBLIC HEALTH

31-2A-4. Obligation to safeguard and promote health of people of the state.

The Department of Public Health shall safeguard and promote the health of the people of this state and is empowered to employ all legal means appropriate to that end. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(1) Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease, disorders, and disabilities and to provide research, conduct investigations, and disseminate information concerning reduction in the incidence and proper control of disease, disorders, and disabilities;

(2) Forestall and correct physical, chemical, and biological conditions that, if left to run their course, could be injurious to health;

(3) Regulate and require the use of sanitary facilities at construction sites and places of public assembly and to regulate persons, firms, and corporations engaged in the rental and service of portable chemical toilets;

(4) Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department's rules and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to a disease communicable to man;

(5) Procure and distribute drugs and biologicals and purchase services from clinics, laboratories, hospitals, and other health facilities and, when authorized by law, to acquire and operate such facilities;

(6) Cooperate with agencies and departments of the federal government and of the state by supplying consultant services in medical and hospital programs and in the health aspects of civil defense, emergency preparedness, and emergency response;

(7) Prevent, detect, and relieve physical defects and deformities;

(8) Promote the prevention, early detection, and control of problems affecting the dental and oral health of the citizens of Georgia;

(9) Contract with county boards of health to assist in the performance of services incumbent upon them under Chapter 3 of this title and, in the event of grave emergencies of more than local peril, to employ whatever means may be at its disposal to overcome such emergencies;

(10) Contract and execute releases for assistance in the performance of its functions and the exercise of its powers and to supply services which are within its purview to perform;

(11) Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of disease and conditions deleterious to health or to determine compliance with health laws and rules, regulations, and standards thereunder;

(12) Establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for laboratory services provided, schedules to be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such laboratory services, provided no person shall be denied services on the basis of his or her inability to pay. All fees paid thereunder shall be paid into the general funds of the State of Georgia. The individual who requests the services authorized in this paragraph, or the individual for whom the laboratory services authorized in this paragraph are performed, shall be responsible for payment of the service fees. As used in this paragraph, the term "individual" means a natural person or his or her responsible health benefit policy or Title XVIII, XIX, or XXI of the federal Social Security Act of 1935;

(13) Exchange data with the Department of Community Health for purposes of health improvement and fraud prevention for programs operated by the Department of Community Health pursuant to mutually agreed upon data sharing agreements and in accordance with federal confidentiality laws relating to health care; and

(14) Provide The Council of Superior Court Clerks of Georgia the data set forth in Code Section 15-12-40.1, without charge and in the electronic format requested. (Code 1981, § 31-2A-4, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214; Ga. L. 2014, p. 451, § 10/HB 776.)

The 2014 amendment, effective July 1, 2014, deleted "and" at the end of paragraph (12); substituted "; and" for a period at the end of paragraph (13); and added paragraph (14).

31-2A-12. Rules and regulations governing operation of land disposal sites for septic tank waste from one business.

Repealed by Ga. L. 2012, p. 843, § 1B/HB 1102, effective July 1, 2014.

Editor's notes. — This Code section was based on Code 1981, § 31-2-8, enacted by Ga. L. 2002, p. 927, § 6A; Ga. L. 2007, p. 127, § 5/HB 463; Code 1981, § 31-2-13, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-12, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214; Ga. L. 2012, p. 843, § 1B/HB 1102 and was repealed by its own terms effective July 1, 2014.

31-2A-14. Georgia Diabetes Control Grant Program; advisory committee; administration of authorized grant programs; grant criteria.

Editor's notes. — Pursuant to the terms of subsection (f), funds were not appropriated at the 2010, 2011, 2012, 2013, or 2014 sessions of the General Assembly.

31-2A-16. Maternal Mortality Review Committee established.

(a) The General Assembly finds that:

(1) Georgia currently ranks fiftieth in maternal deaths in the United States;

(2) Maternal deaths are a serious public health concern and have a tremendous family and societal impact;

(3) Maternal deaths are significantly underestimated and inadequately documented, preventing efforts to identify and reduce or eliminate the causes of death;

(4) No processes exist in this state for the confidential identification, investigation, or dissemination of findings regarding maternal deaths;

(5) The federal Centers for Disease Control and Prevention has determined that maternal deaths should be investigated through state based maternal mortality reviews in order to institute the systemic changes needed to decrease maternal mortality; and

(6) There is a need to establish a program to review maternal deaths and to develop strategies for the prevention of maternal deaths in Georgia.

(b) The Department of Public Health shall establish a Maternal Mortality Review Committee to review maternal deaths and to develop

strategies for the prevention of maternal deaths. The committee shall be multidisciplinary and composed of members as deemed appropriate by the department. The department may contract with an external organization to assist in collecting, analyzing, and disseminating maternal mortality information, organizing and convening meetings of the committee, and other tasks as may be incident to these activities, including providing the necessary data, information, and resources to ensure successful completion of the ongoing review required by this Code section.

(c) The committee shall:

(1) Identify maternal death cases;

(2) Review medical records and other relevant data;

(3) Contact family members and other affected or involved persons to collect additional relevant data;

(4) Consult with relevant experts to evaluate the records and data;

(5) Make determinations regarding the preventability of maternal deaths;

(6) Develop recommendations for the prevention of maternal deaths; and

(7) Disseminate findings and recommendations to policy makers, health care providers, health care facilities, and the general public.

(d)(1) Health care providers licensed pursuant to Title 43, health care facilities licensed pursuant to Chapter 7 of Title 31, and pharmacies licensed pursuant to Chapter 4 of Title 26 shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee.

(2) A health care provider, health care facility, or pharmacy providing access to medical records pursuant to this Code section shall not be held liable for civil damages or be subject to any criminal or disciplinary action for good faith efforts in providing such records.

(e)(1) Information, records, reports, statements, notes, memoranda, or other data collected pursuant to this Code section shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person. Such information, records, reports, statements, notes, memoranda, or other data shall not be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the department or any other person, except as may be necessary for the purpose of furthering the review of the committee of the case to which they relate. No person participating in such review shall disclose, in any manner, the

information so obtained except in strict conformity with such review project.

(2) All information, records of interviews, written reports, statements, notes, memoranda, or other data obtained by the department, the committee, and other persons, agencies, or organizations so authorized by the department pursuant to this Code section shall be confidential.

(f)(1) All proceedings and activities of the committee under this Code section, opinions of members of such committee formed as a result of such proceedings and activities, and records obtained, created, or maintained pursuant to this Code section, including records of interviews, written reports, and statements procured by the department or any other person, agency, or organization acting jointly or under contract with the department in connection with the requirements of this Code section, shall be confidential and shall not be subject to Chapter 14 of Title 50, relating to open meetings, or Article 4 of Chapter 18 of Title 50, relating to open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding; provided, however, that nothing in this Code section shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the committee's proceedings.

(2) Members of the committee shall not be questioned in any civil or criminal proceeding regarding the information presented in or opinions formed as a result of a meeting or communication of the committee; provided, however, that nothing in this Code section shall be construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information.

(g) Reports of aggregated nonindividually identifiable data shall be compiled on a routine basis for distribution in an effort to further study the causes and problems associated with maternal deaths. Reports shall be distributed to the General Assembly, health care providers and facilities, key government agencies, and others necessary to reduce the maternal death rate. (Code 1981, § 31-2A-16, enacted by Ga. L. 2014, p. 337, § 1/SB 273.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 31-2A-16, as enacted by Ga. L. 2014, p. 822, § 1/HB 966, was redesignated as Code Section 31-2A-17.

31-2A-17. Alzheimer's Disease Registry established; purpose; procedures; rules and regulations; confidentiality of data.

(a) There is established within the Department of Public Health the Alzheimer's Disease Registry.

(b) The purpose of the registry shall be to assist in the development of public policy and planning relative to Alzheimer's disease and related disorders. The registry shall provide a central data base of individuals with Alzheimer's disease or related disorders.

(c) The department shall establish procedures and promulgate rules and regulations for the establishment and operation of the registry. Such procedures, rules, and regulations shall provide for:

(1) Collecting and evaluating data regarding the prevalence of Alzheimer's disease and related disorders in Georgia, including who shall report the data to the registry;

(2) Determining what information shall be maintained in the registry and the length of time such data shall be available;

(3) Sharing of data for policy planning purposes;

(4) Disclosing nonidentifying data to support Alzheimer's and related disorder research;

(5) The methodology by which families and physicians of persons who are reported to the registry shall be contacted to gather additional data; and

(6) Information about public and private resources.

(d) The collected data in the registry shall be confidential, and all persons to whom the data is released shall maintain patient confidentiality. No publication of information, biotechnical research, or medical data shall be made that identifies any patient by name. The registry shall be established and regulated pursuant to the requirements of 42 U.S.C. Section 1301, et seq., and P.L. 104-191, the federal Health Insurance Portability and Accountability Act of 1996. (Code 1981, § 31-2A-17, enacted by Ga. L. 2014, p. 822, § 1/HB 966.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 31-2A-16, as enacted by Ga. L. 2014, p. 822, § 1/HB 966, was redesignated as Code Section 31-2A-17.

CHAPTER 6

STATE HEALTH PLANNING AND DEVELOPMENT

Cross references. — Offering continuing care when resident purchases resident owned living unit, § 33-45-7.1.

ARTICLE 2

ORGANIZATION

31-6-21. Department of Community Health generally.

JUDICIAL DECISIONS

Case by case regulation rendered unconstitutionally vague. — In a competitor's appeal of the issuance of a Certificate of Need (CON) to a hospital, a trial court properly reversed the grant of the CON by the Georgia Department of Community Health because the case-by-case provision in Ga. Comp. R. & Regs. 111-2-2-.40(1)(a) was unconstitutionally vague since the regulation lacked ascertainable standards and specific guidelines to limit the Department's discretion. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 324 Ga. App. 326, 750 S.E.2d 401 (2013).

31-6-21.1. Procedures for rule making by Department of Community Health.

JUDICIAL DECISIONS

Case by case regulation rendered unconstitutionally vague. — In a competitor's appeal of the issuance of a Certificate of Need (CON) to a hospital, a trial court properly reversed the grant of the CON by the Georgia Department of Community Health because the case-by-case provision in Ga. Comp. R. & Regs. 111-2-2-.40(1)(a) was unconstitutionally vague since the regulation lacked ascertainable standards and specific guidelines to limit the Department's discretion. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 324 Ga. App. 326, 750 S.E.2d 401 (2013).

ARTICLE 3

CERTIFICATE OF NEED PROGRAM

31-6-40. Certificate of need required for new institutional health services; exemption.

JUDICIAL DECISIONS

Case by case regulation rendered unconstitutionally vague. — In a competitor's appeal of the issuance of a Certificate of Need (CON) to a hospital, a trial

court properly reversed the grant of the CON by the Georgia Department of Community Health because the case-by-case provision in Ga. Comp. R. & Regs. 111-2-2-.40(1)(a) was unconstitutionally vague since the regulation lacked ascertainable standards and specific guidelines to limit the Department's discretion. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 324 Ga. App. 326, 750 S.E.2d 401 (2013).

Exhaustion of administrative remedies.

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ACSs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ACSs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-40.1. Acquisition of health care facilities; penalty for failure to notify the department; limitation on applications; agreement to care for indigent patients; requirements for destination cancer hospitals; notice and hearing provisions for penalties authorized under this Code section.

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-40.2. New perinatal services.

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-42. Qualifications for issuance of certificate.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

Case by case regulation rendered unconstitutionally vague. — In a competitor's appeal of the issuance of a Certificate of Need (CON) to a hospital, a trial

court properly reversed the grant of the CON by the Georgia Department of Community Health because the case-by-case provision in Ga. Comp. R. & Regs. 111-2-2-.40(1)(a) was unconstitutionally vague since the regulation lacked ascertainable standards and specific guidelines to limit the Department's discretion. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 324 Ga. App. 326, 750 S.E.2d 401 (2013).

31-6-44. Certificate of Need Appeal Panel.

JUDICIAL DECISIONS

Standing to challenge. — Competitor had standing to challenge a regulation providing for a case-by-case determination when considering an application for a Certificate of Need (CON) because the applying hospital did not challenge the competitor's standing and the evidence showed that the competitor would be aggrieved by the grant of the CON. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 324 Ga. App. 326, 750 S.E.2d 401 (2013).

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-44.1. Judicial review.

Law reviews. — For annual survey on administrative law, see 65 Mercer L. Rev. 41 (2013).

JUDICIAL DECISIONS

Construction. — Georgia Court of Appeals finds that the Georgia legislature uses the term "jurisdiction" under O.C.G.A. § 31-6-44.1(c) with regard to attorney fees because the legislature intends to refer to something other than a challenge asserting that the Georgia Department of Community Health (DCH) exceeded the department's statutory authority or acted ultra vires in issuing a particular decision with regard to a Certificate of Need; rather, the Court of Appeals concludes that the legislature intends the second exception to encompass challenges to the DCH's jurisdiction as a whole. Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

Georgia Court of Appeals concludes that the Georgia legislature uses the term "jurisdiction" in O.C.G.A. § 31-6-44.1(c) to refer to the Georgia Department of Community Health's general power to act and not to the department's authority to act with regard to a particular Certificate of Need. Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

Application. — Trial court erred by denying a health system's motion for attorney fees pursuant to O.C.G.A. § 31-6-44.1(c) with regard to its successful defense to a certificate of need challenge determination of the Georgia Department of Community Health (DCH) because the challenging hospital did not assert a jurisdictional challenge to the DCH's determination, thus, the challenge did not fall into the exception to fees under § 31-6-44.1(c). Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-45. Revocation of certificate of need; enforcement of chapter; regulatory investigations and examinations.

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-47. Exemptions from chapter.

JUDICIAL DECISIONS

Exhaustion of administrative remedies.

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ASCs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013); Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 324 Ga. App. 326, 750 S.E.2d 401 (2013).

ARTICLE 4

REPORTS

31-6-70. Reports to the department by certain health care facilities and all ambulatory surgical centers and imaging centers.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

Exhaustion of administrative remedies.

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were

available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ASCs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

CHAPTER 7

REGULATION AND CONSTRUCTION OF HOSPITALS AND OTHER HEALTH CARE FACILITIES

Article 1

Regulation of Hospitals and Related Institutions

Sec.

Article 4

County and Municipal Hospital Authorities

Article 11

Facility Licensing and Employee Records Checks

Article 14

Nursing Homes Employee Records Checks

Cross references. — Offering continuing care when resident purchases resident owned living unit, § 33-45-7.1.

ARTICLE 1

REGULATION OF HOSPITALS AND RELATED INSTITUTIONS

31-7-12.1. Unlicensed personal care home; civil penalties; negligence per se for certain legal claims; declared nuisance dangerous to public health, safety, and welfare; criminal sanctions.

(a) A facility shall be deemed to be an "unlicensed personal care home" if it is unlicensed and not exempt from licensure and:

(1) The facility is providing personal services and is operating as a personal care home as those terms are defined in Code Section 31-7-12;

(2) The facility is held out as or represented as providing personal services and operating as a personal care home as those terms are defined in Code Section 31-7-12; or

(3) The facility represents itself as a licensed personal care home.

(b) Any unlicensed personal care home shall be assessed by the department, after opportunity for hearing in accordance with the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a civil penalty in the amount of $100.00 per bed per day for each day of violation of subsection (b) of Code Section 31-7-12. The department shall send a notice by certified mail or statutory overnight delivery stating that licensure is required and the department's intent to impose a civil penalty. Such notice shall be deemed to be constructively received on the date of the first attempt to deliver such notice by the United States Postal Service. The department shall take no action to collect such civil penalty until after opportunity for a hearing.

(c) In addition to other remedies available to the department, the civil penalty authorized by subsection (b) of this Code section shall be doubled if the owner or operator continues to operate the unlicensed personal care home, after receipt of notice pursuant to subsection (b) of this Code section.

(d) The owner or operator of a personal care home who is assessed a civil penalty in accordance with this Code section may have review of such civil penalty by appeal to the superior court in the county in which the action arose or to the Superior Court of Fulton County in accordance with the provisions of Code Section 31-5-3.

(e) In addition to the sanctions authorized herein, an unlicensed personal care home shall be deemed to be negligent per se in the event of any claim for personal injury or wrongful death of a resident.

(f) It is declared that the owning or operating of an unlicensed personal care home in this state constitutes a nuisance dangerous to the public health, safety, and welfare. The commissioner or the district attorney of the judicial circuit in which such unlicensed personal care home is located may file a petition to abate such nuisance as provided in Chapter 2 of Title 41.

(g) Any person who owns or operates a personal care home in violation of subsection (b) of Code Section 31-7-12 shall be guilty of a misdemeanor for a first violation, unless such violation is in conjunction with abuse, neglect, or exploitation as defined in Code Section 30-5-3, in which case such person shall be guilty of a felony and, upon conviction,

shall be punished by imprisonment for not less than one nor more than five years. Upon conviction for a second or subsequent such violation, such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than ten years. (Code 1981, § 31-7-12.1, enacted by Ga. L. 1994, p. 461, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2011, p. 227, § 13A/SB 178; Ga. L. 2012, p. 351, § 3/HB 1110; Ga. L. 2014, p. 682, § 1/HB 899.)

The 2014 amendment, effective July 1, 2014, added the second sentence in subsection (f); redesignated the former second and third sentences of subsection (f) as present subsection (g); and rewrote subsection (g).

31-7-19. Nursing homes to annually offer influenza vaccinations to health care workers and other employees; immunity from liability.

(a) Each nursing home shall annually offer on site to its health care workers and other employees who have direct contact with patients, at no cost, vaccinations for the influenza virus in accordance with the recommendations of the Centers for Disease Control and Prevention, subject to availability of the vaccine. Each nursing home shall keep on record a signed statement from each such health care worker and employee stating that he or she has been offered vaccination against the influenza virus and has either accepted or declined such vaccination. A nursing home may offer to its health care workers and other employees who have direct contact with patients any other vaccination required or recommended by, and in accordance with the recommendations of, the Centers for Disease Control and Prevention, which may be offered or administered pursuant to standing orders approved by the nursing home's medical staff to ensure the safety of employees, patients, visitors, and contractors.

(b) A nursing home or health care provider acting in good faith and in accordance with generally accepted health care standards applicable to such nursing home or health care provider shall not be subject to administrative, civil, or criminal liability or to discipline for unprofessional conduct for complying with the requirements of this Code section. (Code 1981, § 31-7-19, enacted by Ga. L. 2013, p. 783, § 1/HB 208.)

Effective date. — This Code section became effective July 1, 2013.

31-7-20. Medical facilities to make good faith application to southern regional TRICARE managed care support coordinator for certification in the TRICARE program.

(a) Each medical facility in this state shall, not later than July 1, 2015, make a good faith application to the southern regional TRICARE managed care support contractor for certification in the TRICARE program.

(b) If any medical facility fails to qualify for certification in the TRICARE program, such medical facility shall implement a plan to upgrade the facility, equipment, personnel, or such other cause for the disqualification within one year of notice of such deficiency.

(c) Each medical facility shall submit reports to the commissioner detailing its efforts to join the TRICARE program and shall submit copies of applications, acceptances or rejections, correspondences, and any other information the commissioner deems necessary.

(d) The commissioner shall maintain files on each medical facility in this state and shall monitor each medical facility's efforts to join the TRICARE program.

(e) Nothing in this Code section shall require a medical facility to enter into a contract with the southern regional managed care support contractor or to participate in TRICARE as a network provider or as a participating non-network provider, as such terms are defined in the federal TRICARE regulations. (Code 1981, § 31-7-20, enacted by Ga. L. 2014, p. 83, § 1-1/SB 391.)

Effective date. — This Code section became effective July 1, 2014.

ARTICLE 4

COUNTY AND MUNICIPAL HOSPITAL AUTHORITIES

31-7-72. Creation of hospital authority in each county and municipality.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-74. Residency requirement; officers; compensation; rules and regulations.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-75. Functions and powers.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-77. Prohibition on for-profit projects; rates and charges; utilization of revenues to pay certain obligations.

(a) No authority shall operate or construct any project for profit. It shall fix rates and charges consistent with this declaration of policy and such as will produce revenues only in amounts sufficient, together with all other funds of the authority, to pay principal and interest on certificates and obligations of the authority, to provide for maintenance and operation of the project, and to create and maintain a reserve sufficient to meet principal and interest payments due on any certificates in any one year after the issuance thereof. The authority may provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services.

(b) Notwithstanding subsection (a) of this Code section or any other provisions to the contrary, a joint hospital authority established pursuant to Code Section 31-7-72 which operates a hospital containing more than 900 licensed beds shall only utilize revenues to pay principal and interest on certificates and obligations of the authority, to pay pension plan obligations of the authority existing as of January 1, 2013, and for funding projects leased by the authority to a lessee pursuant to a contract entered into in accordance with paragraph (7) of Code Section 31-7-75; provided, however, that no more than 1 percent of revenues shall be utilized to pay for personnel costs for employees or contractors of the authority. (Ga. L. 1941, p. 241, § 6; Code 1933, § 88-1806, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2013, p. 1037, § 1/SB 62.)

The 2013 amendment, effective May 7, 2013, designated the existing provisions as subsection (a); and added subsection (b).

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-79. Liability on revenue certificates; tax exemption.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-84. Payment for authority's services and facilities; levy of tax by political subdivisions; compliance by authority with county budgetary procedures.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-85. Contracts with political subdivisions.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-89. Procedure for dissolution; disposition of property.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

ARTICLE 6

PEER REVIEW GROUPS

31-7-132. Immunity from liability for peer review activities; immunity from liability of persons providing information.

JUDICIAL DECISIONS

Hospital immune from liability because malice not established.

Superior court erred in denying a hospital's motion for summary judgment in a doctor's action contending that the denial of an application for renewal of clinical privileges was void because the hospital was entitled to immunity from the doctor's equitable claims pursuant to O.C.G.A. § 31-7-132(a); the superior court erred in finding that there was evidence from which the jury could infer that the peer review process was motivated by malice. DeKalb Med. Ctr. v. Obekpa, 315 Ga. App. 739, 728 S.E.2d 265 (2012).

31-7-133. Confidentiality of review organization's records.

Cross references. — Privileges generally, § 24-5-501 et seq.

JUDICIAL DECISIONS

Cited in Cancel v. Sewell, 321 Ga. App. 523, 740 S.E.2d 870 (2013).

ARTICLE 6A

MEDICAL REVIEW COMMITTEES

31-7-143. Committee proceedings and records immune from discovery or use as evidence in civil actions.

JUDICIAL DECISIONS

Cited in Cancel v. Sewell, 321 Ga. App. 523, 740 S.E.2d 870 (2013).

ARTICLE 11

FACILITY LICENSING AND EMPLOYEE RECORDS CHECKS

31-7-250. Definitions.

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of any of the following offenses:

(A) A violation of Code Section 16-5-21, relating to aggravated assault;

(B) A violation of Code Section 16-5-24, relating to aggravated battery;

(C) A violation of Code Section 16-6-1, relating to rape;

(D) A felony violation of Code Section 16-8-2, relating to theft by taking;

(E) A felony violation of Code Section 16-8-3, relating to theft by deception;

(F) A felony violation of Code Section 16-8-4, relating to theft by conversion;

(G) A felony violation of Code Section 16-9-1;

(H) A violation of Code Section 16-5-1;

(I) A violation of Code Section 16-4-1, relating to criminal attempt as it concerns attempted murder;

(J) A violation of Code Section 16-8-40, relating to robbery;

(K) A violation of Code Section 16-8-41, relating to armed robbery;

(L) A violation of Chapter 13 of Title 16, relating to controlled substances;

(M) A violation of Code Section 16-5-23.1, relating to battery;

(N) A violation of Code Section 16-6-5.1;

(O) A violation of Article 8 of Chapter 5 of Title 16;

(P) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere; or

(Q) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(3.1) "Department" means the Department of Community Health.

(4) "Director" means the chief administrative or executive officer or manager.

(5) "Employee" means any person, other than a director, utilized by a personal care home to provide personal services to any resident on

behalf of the personal care home or to perform at any facilities of the personal care home any duties which involve personal contact between that person and any paying resident of the personal care home.

(6) "Facility" means real property of a personal care home where residents reside.

(7) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(8) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(9) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(10) "License" means the permit or document issued by the department to authorize the personal care home to which it is issued to operate a facility under this chapter.

(11) "Personal care home" or "home" means a home required to be licensed or permitted under Code Section 31-7-12 or an assisted living community as defined in Code Section 31-7-12.2.

(11.1) "Personal services" includes, but is not limited to, individual assistance with or supervision of self-administered medication and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting.

(12) "Preliminary records check application" means an application for a preliminary records check determination on forms provided by the department.

(13) "Preliminary records check determination" means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(14) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this article, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(15) "Regular license" means a permit which will remain in effect for the personal care home, until and unless the facility ceases to operate or revocation proceedings are commenced.

(16) "Satisfactory determination" means a written determination that a person for whom a records check was performed was found to have no criminal record.

(17) "Temporary license" means a provisional permit which expires six months or 12 months from the date of issuance, unless extended for good cause by the department.

(18) "Unsatisfactory determination" means a written determination that a person for whom a records check was performed has a criminal record. (Code 1981, § 31-7-250, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1986, p. 822, § 1; Ga. L. 1994, p. 1359, § 1; Ga. L. 2002, p. 942, § 1; Ga. L. 2008, p. 12, § 2-19/SB 433; Ga. L. 2011, p. 227, § 17/SB 178; Ga. L. 2012, p. 351, § 4/HB 1110; Ga. L. 2012, p. 899, § 8-12/HB 1176; Ga. L. 2013, p. 524, § 3-3/HB 78; Ga. L. 2014, p. 444, § 2-9/HB 271.)

The 2013 amendment, effective July 1, 2013, deleted ", relating to sexual assault against a person in custody" following "Code Section 16-6-5.1" at the end of subparagraph (2)(N), and substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person" in subparagraph (2)(O).

The 2014 amendment, effective July 1, 2014, deleted ", relating to murder and felony murder" following "Code Section 16-5-1" at the end of subparagraph (2)(H).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

ARTICLE 14

NURSING HOMES EMPLOYEE RECORDS CHECKS

31-7-350. Definitions.

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of an offense which constitutes a felony with respect to the following:

(A) A violation of Code Section 16-5-21;

(B) A violation of Code Section 16-5-24;

(C) A violation of Code Section 16-6-1;

(D) A violation of Code Section 16-8-2;

(E) A violation of Code Section 16-8-3;

(F) A violation of Code Section 16-8-4;

(G) A violation of Code Section 16-5-1;

(H) A violation of Code Section 16-4-1;

(I) A violation of Code Section 16-8-40;

(J) A violation of Code Section 16-8-41;

(K) A felony violation of Code Section 16-9-1;

(L) A violation of Article 8 of Chapter 5 of Title 16;

(M) A violation of Chapter 13 of Title 16; or

(N) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere.

(3) "Criminal record" means any of the following which have reached final disposition within ten years of the date the criminal record check is conducted:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and charges for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Employment applicant" means any person seeking employment by a nursing home. This term shall not include persons employed by the nursing home prior to July 1, 1995.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "Nursing home" or "home" means a home required to be licensed or permitted as a nursing home under the provisions of this chapter.

(7) "Satisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have no criminal record.

(8) "Unsatisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have a criminal record. (Code 1981, § 31-7-350, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 1; Ga. L. 2012, p. 899, § 8-13/HB 1176; Ga. L. 2013, p. 524, § 3-4/HB 78.)

The 2013 amendment, effective July 1, 2013, deleted ", relating to aggravated assault" following "Code Section 16-5-21" at the end of subparagraph (2)(A); deleted ", relating to aggravated battery" following "Code Section 16-5-24" at the end of subparagraph (2)(B); deleted ", relating to rape" following "Code Section 16-6-1" at the end of subparagraph (2)(C); deleted ", relating to theft by taking" following "Code Section 16-8-2" at the end of subparagraph (2)(D); deleted ", relating to theft by deception" following "Code Section 16-8-3" at the end of subparagraph (2)(E); deleted ", relating to theft by conversion" following "Code Section 16-8-4" at the end of subparagraph (2)(F); deleted ", relating to murder and felony murder" following "Code Section 16-5-1" at the end of subparagraph (2)(G); deleted ", relating to criminal attempt as it concerns attempted murder" following "Code Section 16-4-1" at the end of subparagraph (2)(H); deleted ", relating to robbery" following "Code Section 16-8-40" at the end of subparagraph (2)(I); deleted ", relating to armed robbery" following "Code Section 16-8-41" at the end of subparagraph (2)(J); added subparagraph (2)(L); redesignated former subparagraphs (2)(L) and (2)(M) as present subparagraphs (2)(M) and (2)(N), respectively; and deleted ", relating to controlled substances" following "Title 16" at the end of subparagraph (2)(M).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

ARTICLE 15

HOSPITAL ACQUISITION

31-7-401. Notice to Attorney General of acquisition.

JUDICIAL DECISIONS

Promissory estoppel did not apply. — When a facilities owner did not sign an asset sale agreement, a hospital's promissory estoppel claim failed because the parties' letter of intent coupled with the hospital's representation in a premerger notification that the parties would not execute a "binding asset sale agreement" until the Georgia Attorney General approved the agreement established as a matter of law that the hospital could not reasonably rely on the facilities owner's "promise" to purchase the hospital assets. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

Breach of contract. — When a facilities owner did not sign an asset sale agreement, a hospital's breach of contract claim failed because, inter alia, the parties' letter of intent did not incorporate the terms of the asset sale agreement and made clear that those terms were provisional, there was no evidence that the parties agreed to be bound by the terms of the asset sale agreement and, by filing premerger notifications, the parties represented as true that the asset sale agreement would not become a binding, enforceable contract until signed by the parties, and that the letter of intent superseded any written or oral agreements

that may have existed. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

31-7-402. Content and form of notice to Attorney General; retention of experts; payment of costs and expenses.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

31-7-405. Public hearing; expert or consultant required to testify; testimony; representative of acquiring entity to testify.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

JUDICIAL DECISIONS

Breach of contract. — When a facilities owner did not sign an asset sale agreement, a hospital's breach of contract claim failed because, inter alia, the parties' letter of intent did not incorporate the terms of the asset sale agreement and made clear that those terms were provisional, there was no evidence that the parties agreed to be bound by the terms of the asset sale agreement and, by filing premerger notifications, the parties represented as true that the asset sale agreement would not become a binding, enforceable contract until signed by the parties, and that the letter of intent superseded any written or oral agreements that may have existed. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

CHAPTER 8

CARE AND PROTECTION OF INDIGENT AND ELDERLY PATIENTS

Article 3

Long-term Care Ombudsman Program

Article 4

Reporting Abuse or Exploitation of Residents in Long-term Care Facilities

Article 6

Indigent Care Trust Fund

ARTICLE 3

LONG-TERM CARE OMBUDSMAN PROGRAM

31-8-51. Definitions.

As used in this article, the term:

(1) "Community ombudsman" means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

(1.1) "Department" means the Department of Human Services.

(2) "Long-term care facility" means any skilled nursing home, intermediate care home, private home care provider, assisted living community, or personal care home now or hereafter subject to regulation and licensure by the Department of Community Health.

(3) "Resident" means any person who is receiving treatment or care in any long-term care facility who seeks admission to such facility or who has been discharged or transferred from such facility.

(4) "State ombudsman" means the state ombudsman established under Code Section 31-8-52. (Code 1933, § 88-1901a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 2009, p. 453, § 2-16/HB 228; Ga. L. 2011, p. 227, § 18/SB 178; Ga. L. 2014, p. 477, § 1/SB 207.)

The 2014 amendment, effective July 1, 2014, inserted "private home care provider," in paragraph (2).

ARTICLE 4

REPORTING ABUSE OR EXPLOITATION OF RESIDENTS IN LONG-TERM CARE FACILITIES

31-8-81. Definitions.

As used in this article, the term:

(1) "Abuse" means any intentional or grossly negligent act or series of acts or intentional or grossly negligent omission to act which causes injury to a resident, including, but not limited to, assault or battery, failure to provide treatment or care, or sexual harassment of the resident.

(1.1) "Department" means the Department of Community Health.

(2) "Exploitation" means the illegal or improper use of a resident or the resident's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for one's own or another's profit or advantage.

(3) "Long-term care facility" or "facility" means any skilled nursing home, intermediate care home, assisted living community, personal care home, or community living arrangement now or hereafter subject to regulation and licensure by the department.

(4) "Resident" means any person receiving treatment or care in a long-term care facility. (Code 1933, § 88-1902c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2003, p. 558, § 4; Ga. L. 2007, p. 219, § 3/HB 233; Ga. L. 2011, p. 227, § 19/SB 178; Ga. L. 2011, p. 705, § 4-11/HB 214; Ga. L. 2013, p. 524, § 1-11/HB 78.)

The 2013 amendment, effective July 1, 2013, in paragraph (2), substituted "the illegal or improper use of a resident or the resident's resources" for "an unjust or improper use of another person or the person's property"; and inserted "or another's" near the end.

31-8-82. Persons required to report abuse or exploitation; time for making report; contents of report; records; privileged communications.

(a) Any of the following people who have reasonable cause to believe that any resident or former resident has been abused or exploited while residing in a long-term care facility shall immediately make a report as described in subsection (d) of this Code section by telephone or in person

to the department and shall make the report to the appropriate law enforcement agency or prosecuting attorney:

(1) Any person required to report child abuse as provided in subsection (c) of Code Section 19-7-5;

(2) Administrators, managers, or other employees of hospitals or long-term care facilities;

(3) Physical therapists;

(4) Occupational therapists;

(5) Day-care personnel;

(6) Coroners;

(7) Medical examiners;

(8) Emergency medical services personnel, as defined in Code Section 31-11-49;

(9) Any person who has been certified as an emergency medical technician, cardiac technician, paramedic, or first responder pursuant to Chapter 11 of Title 31;

(10) Employees of a public or private agency engaged in professional health related services to residents; and

(11) Clergy members.

(b) Persons required to make a report pursuant to subsection (a) of this Code section shall also make a written report to the department within 24 hours after making the initial report.

(c) Any other person who has knowledge that a resident or former resident has been abused or exploited while residing in a long-term care facility may report or cause a report to be made to the department or the appropriate law enforcement agency.

(d) A report of suspected abuse or exploitation shall include the following:

(1) The name and address of the person making the report unless such person is not required to make a report;

(2) The name and address of the resident or former resident;

(3) The name and address of the long-term care facility;

(4) The nature and extent of any injuries or the condition resulting from the suspected abuse or exploitation;

(5) The suspected cause of the abuse or exploitation; and

(6) Any other information which the reporter believes might be helpful in determining the cause of the resident's injuries or condition and in determining the identity of the person or persons responsible for the abuse or exploitation.

(e) The department shall maintain accurate records which shall include all reports of abuse or exploitation, the results of all investigations and administrative or judicial proceedings, and a summary of actions taken to assist the resident.

(f) Any suspected abuse or exploitation which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse or exploitation has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report such matters confided to him or her solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about abuse or exploitation from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of such matters from the confession of the perpetrator. (Code 1933, § 88-1903c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2009, p. 453, § 1-33/HB 228; Ga. L. 2013, p. 524, § 1-12/HB 78.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

31-8-86. Confidentiality.

The identities of the resident, the alleged perpetrator, and persons making a report or providing information or evidence shall not be disclosed to the public unless required to be revealed in court proceedings or upon the written consent of the person whose identity is to be revealed or as otherwise required by law. Upon the resident's or his or her representative's request, the department shall make information obtained in an abuse report or complaint and an investigation available to an allegedly abused or exploited resident or his or her representative for inspection or duplication, except that such disclosure shall be made without revealing the identity of any other resident, the person making the report, or persons providing information by name or inference. For the purpose of this Code section, the term "representative" shall include any person authorized in writing by the resident or appointed by an appropriate court to act upon the resident's behalf. The term "representative" also shall include a family member of a deceased or physically or mentally impaired resident unable to grant authorization;

provided, however, that such family members who do not have written or court authorization shall not be authorized by this Code section to receive the resident's health records as defined in Code Section 31-33-1. Nothing in this Code section shall be construed to deny agencies participating in joint investigations at the request of and with the department, or conducting separate investigations of abuse or exploitation within an agency's scope of authority, or law enforcement personnel who are conducting an investigation into any criminal offense in which a resident is a victim from having access to such records. (Code 1933, § 88-1908c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 1991, p. 1601, § 2; Ga. L. 2013, p. 524, § 1-13/HB 78.)

The 2013 amendment, effective July 1, 2013, twice inserted "or her" in the second sentence; inserted "that" in the fourth sentence; and added the last sentence.

ARTICLE 5

BILL OF RIGHTS FOR RESIDENTS OF LONG-TERM CARE FACILITIES

31-8-100. Short title.

JUDICIAL DECISIONS

Long-arm personal jurisdiction over out-of-state parent company not established. — Trial court erred by denying an out-of-state company's motion to dismiss based on lack of personal jurisdiction because the company met the company's burden of showing a lack of minimum contacts needed to support the exercise of personal jurisdiction, and that conclusion was consistent with other jurisdictional authority holding that ownership of a resident nursing home subsidiary by an out-of-state parent corporation without more is insufficient to obtain jurisdiction of the parent corporation. Drumm Corp. v. Wright, 755 S.E.2d 850, 2014 Ga. App. LEXIS 112 (2014).

ARTICLE 6

Indigent Care Trust Fund

31-8-152.1. State sales and use taxation of certain health care services.

Repealed by Ga. L. 2011, p. 674, § 1-1/HB 117, effective June 30, 2014.

Editor's notes. — This Code section was based on Code 1981, § 31-8-152.1, enacted by Ga. L. 2011, p. 674, § 1-1/HB 117 and was repealed by its own terms effective June 30, 2014.

ARTICLE 6C

HOSPITAL MEDICAID FINANCING PROGRAM

Effective date. — This article became effective February 13, 2013, for purposes of proposing rules and regulations and effective for all other purposes on July 1, 2013.

Editor's notes. — Ga. L. 2010, p. 9, § 2-1/HB 1055, effective June 30, 2013, repealed the Code sections formerly codified as this article. The former article consisted of Code Sections 31-8-179 and 31-8-179.1 through 31-8-179.8, relating to provider payment agreements, and was based on Code 1981, §§ 31-8-179—31-8-179.8, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055; Ga. L. 2011, p. 752, § 31/HB 142.

31-8-179. (Repealed effective June 30, 2017) Short title.

This article is enacted pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution and shall be known and may be cited as the "Hospital Medicaid Financing Program Act." (Code 1981, § 31-8-179, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.1. (Repealed effective June 30, 2017) Definitions.

As used in this article, the term:

(1) "Board" means the Board of Community Health.

(2) "Department" means the Department of Community Health.

(3) "Hospital" means an institution licensed pursuant to Chapter 7 of this title which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term includes public, private, rehabilitative, geriatric, osteopathic, and other specialty hospitals but shall not include psychiatric hospitals which shall have the same meaning as facilities as defined in paragraph (7) of Code Section 37-3-1, critical access hospitals as defined in paragraph (3) of Code Section 33-21A-2, or any state owned or state operated hospitals.

(4) "Provider payment" means a payment assessed by the department pursuant to this article for the privilege of operating a hospital. (Code 1981, § 31-8-179.1, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.2. (Repealed effective June 30, 2017) Department of Community Health authorized to assess one or more provider payments on hospitals for the purpose of obtaining federal financial participation for Medicaid.

(a) The board shall be authorized to establish and assess, by board rule, one or more provider payments on hospitals, or a subclass of hospitals, as defined by the board; provided, however, that if any such provider payment is established and assessed, the provider payment shall comply with the requirements of 42 C.F.R. 433.68. Any provider payment assessed pursuant to this article shall not exceed the amount necessary to obtain federal financial participation allowable under Title XIX of the federal Social Security Act. The aggregate amount of any fees established and assessed pursuant to this subsection shall not exceed those percentages of net patient revenues set forth in the General Appropriations Act. The board shall be authorized to discontinue any provider payment assessed pursuant to this article. The board shall cease to impose any such provider payment if:

(1) The provider payments are not eligible for federal matching funds under Title XIX of the federal Social Security Act; or

(2) The department reduces Medicaid payment rates to hospitals as are in effect on June 30, 2012, or reduces the provider payment rate adjustment factors utilized in developing the state Fiscal Year 2013 capitated rates for Medicaid managed care organizations.

(a.1) The General Assembly shall have the authority to override any provider payment assessed by the board pursuant to this Code section in accordance with the procedures contained in subsection (f) of Code Section 50-13-4.

(b) The board shall be authorized to establish rules and regulations to assess and collect any such provider payments, including, but not limited to, payment frequency and schedules, required information to be submitted, record retention, and whether any such provider payment shall be credited toward any indigent or charity care requirements or considered a community benefit. (Code 1981, § 31-8-179.2, enacted by Ga. L. 2013, p. 1, § 1/SB 24; Ga. L. 2013, p. 1037, § 2/SB 62; Ga. L. 2014, p. 866, § 31/SB 340.)

The 2013 amendment, effective May 7, 2013, in paragraph (a)(2), substituted "2012 or reduces" for "2012; reduces", and deleted "; or alters any payment methodology, administrative rule, or payment policy as are in effect on June 30, 2012, or

creates any new methodology, rule, or policy that has the effect of reducing Medicaid payments to hospitals" following "organizations" at the end.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "42 C.F.R. 433.68" for "42 CFR 433.68" in the introductory language of subsection (a) and revised punctuation in paragraph (a)(2).

U.S. Code. — Title XIX of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.3. (Repealed effective June 30, 2017) Provider payments assessed to be deposited in segregated accounts within Indigent Care Trust Fund; sole purpose of funds to obtain federal financial participation for medical assistance payments for Medicaid recipients; retention and inspection of records; penalties.

(a) Any provider payments assessed pursuant to this article shall be deposited into a segregated account for each payment program within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152. No other funds shall be deposited into any such segregated account or accounts. All funds in any such segregated account or accounts shall be invested in the same manner as authorized for investing other moneys in the state treasury. Any funds deposited into a segregated account pursuant to this article shall be subject to appropriation by the General Assembly.

(b) Any provider payments assessed pursuant to this article shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49.

(c) Each hospital shall keep and preserve for a period of seven years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a hospital for purposes of auditing the calculation of the provider payment. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record.

(d) The department shall be authorized to impose a penalty of up to 6 percent for any hospital that fails to pay a provider payment within the time required by the department for each month or fraction thereof that the provider payment is overdue. If a required provider payment has not been received by the department in accordance with department timelines, the department shall withhold an amount equal to the provider payment and penalty owed from any medical assistance payment due such hospital under the Medicaid program. Any provider

payment assessed pursuant to this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the applicable segregated account. (Code 1981, § 31-8-179.3, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.4. (Repealed effective June 30, 2017) Authorized use of appropriated funds.

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into one or more segregated accounts. Such appropriations shall be authorized to be made for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49. Any appropriation from a segregated account for any purpose other than such medical assistance payments shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such funds have been appropriated.

(c) Appropriations from a segregated account to the department shall not lapse to the general fund at the end of the fiscal year. (Code 1981, § 31-8-179.4, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.5. (Repealed effective June 30, 2017) Applicability of Georgia Medical Assistance Act.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall apply to the department in carrying out the purposes of this article. (Code 1981, § 31-8-179.5, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.6. (Repealed effective June 30, 2017) Termination date.

This article shall stand repealed on June 30, 2017, unless reauthorized by the General Assembly prior to that date. (Code 1981, § 31-8-179.6, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

ARTICLE 9

FEDERAL AND STATE FUNDED HEALTH CARE FINANCING PROGRAMS OVERVIEW COMMITTEE

Effective date. — This article became effective May 7, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Article 9 of Chapter 8 of Title 31 as enacted by Ga. L. 2013, p. 586, § 1/SB 14, was redesignated as Article 10 of Chapter 8 of Title 31.

31-8-210. Committee established; composition; officers; terms of office; duties and responsibilities; assistance from other state officers and agencies; compensation, per diem, and expense allowances; funding.

(a) There is created as a joint committee of the General Assembly the Federal and State Funded Health Care Financing Programs Overview Committee to be composed of one member of the House of Representatives appointed by the Speaker of the House; one member of the Senate appointed by the President of the Senate; the chairperson of the House Committee on Appropriations or his or her designee; the chairperson of the House Committee on Health and Human Services or his or her designee; the chairperson of the House Committee on Ways and Means or his or her designee; the chairperson of the Senate Appropriations Committee or his or her designee; the chairperson of the Senate Health and Human Services Committee or his or her designee; the chairperson of the Senate Finance Committee; and the minority leaders of the Senate and House of Representatives or their designees. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. Beginning in 2013, and every four years thereafter, the chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee, and the vice chairperson of the committee shall be appointed by the Speaker of the House of Representatives from the membership of the committee. Beginning in 2015, and every four years thereafter, the chairperson of the committee shall be appointed by the Speaker of the House of Representatives from the membership of the committee, and the vice chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee. The chairperson and vice chairperson shall serve terms of two years concurrent with their terms as members of the General

Assembly. Vacancies in an appointed member's position or in the offices of chairperson or vice chairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the actions of the board and the department under this article to evaluate the success with which the board and the department are accomplishing the statutory duties and functions as provided in this article.

(b) The board and the department shall cooperate with the committee, its authorized personnel, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committee set forth in this Code section may be timely and efficiently discharged. The committee shall, on or before the first day of January of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations based upon the review of the board and the department as set forth in this Code section.

(c)(1) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(2) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government. (Code 1981, § 31-8-210, enacted by Ga. L. 2013, p. 1037, § 3/SB 62.)

ARTICLE 10

GEORGIA ALZHEIMER'S AND RELATED DEMENTIAS STATE PLAN TASK FORCE

Effective date. — This article became effective May 6, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Article 9 of Chapter 8 of Title 31 as enacted by Ga. L. 2013, p. 586, § 1/SB 14, was redesignated as Article 10 of Chapter 8 of Title 31.

31-8-300 through 31-8-306.

Repealed by Ga. L. 2014, p. 866, § 31/SB 340, effective April 29, 2014.

Editor's notes. — This article was based on Ga. L. 2013, p. 586, § 1/SB 14.

CHAPTER 9

CONSENT FOR SURGICAL OR MEDICAL TREATMENT

Cross references. — Adult's reliance on prayer or religious nonmedical means of treatment of dependent, § 15-11-107.

31-9-6.1. Disclosure of certain information to persons undergoing certain surgical or diagnostic procedures; failure to comply; exceptions; regulations establishing standards for implementation.

Law reviews. — For annual survey on trial practice and procedure, see 64 Mercer L. Rev. 305 (2012).

CHAPTER 9A

WOMAN'S RIGHT TO KNOW

31-9A-2. Definitions.

Cross references. — Coverage of certain abortions through certain qualified health plans prohibited, § 33-24-59.17.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 253 (2012).

31-9A-6.1. Civil and professional penalties for violations; prerequisites for seeking penalties.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 253 (2012).

CHAPTER 9B

PHYSICIAN'S OBLIGATION IN PERFORMANCE OF ABORTIONS

Law reviews. — For article on the 2012 enactment of this chapter, see 29 Ga. St. U.L. Rev. 253 (2012).

CHAPTER 10

VITAL RECORDS

31-10-9. Registration of births.

JUDICIAL DECISIONS

Cited in Ray v. Hann, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

CHAPTER 11

EMERGENCY MEDICAL SERVICES

Article 3

Personnel

ARTICLE 1

GENERAL PROVISIONS

31-11-8. Liability of persons rendering emergency care; liability of physicians advising ambulance service pursuant to Code Section 31-11-50; limitation to gratuitous services.

Law reviews. — For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

County and ambulance crew members entitled to immunity.

In a case in which a plaintiff sued a county to recover for injuries that the plaintiff allegedly sustained when a county-operated ambulance was involved in a collision while transporting the plaintiff to a local hospital, the trial court correctly ruled that O.C.G.A. § 31-11-8 was controlling in the case and that the county was entitled to statutory immunity thereunder; the undisputed evidence

showed that the emergency medical technicians did not have access to an X-ray machine at the scene and could not accurately exclude the possibility that the plaintiff had internal injuries or fractures that required immediate care. Anderson v. Tattnall County, 318 Ga. App. 877, 734 S.E.2d 843 (2012).

Cited in Abdel-Samed v. Dailey, 294 Ga. 758, 755 S.E.2d 805 (2014).

ARTICLE 3

PERSONNEL

31-11-51. Certification and recertification of emergency medical technicians; rules and regulations; use of conviction data in licensing decisions.

(a) As used in this Code section, the term "conviction data" means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The board shall, by regulation, authorize the department to establish procedures and standards for the licensing of emergency medical services personnel. The department shall succeed to all rules and regulations, policies, procedures, and administrative orders of the composite board which were in effect on December 31, 2001, and which relate to the functions transferred to the department by this chapter. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(c) In reviewing applicants for initial licensure of emergency medical services personnel, the department shall be authorized pursuant to this Code section to obtain conviction data with respect to such applicants for the purposes of determining the suitability of the applicant for licensure.

(d) The department shall by rule or regulation, consistent with the requirements of this subsection, establish a procedure for requesting a fingerprint based criminal history records check from the center and the Federal Bureau of Investigation. Fingerprints shall be in such form and of such quality as prescribed by the center and under standards adopted by the Federal Bureau of Investigation. Fees may be charged as necessary to cover the cost of the records search. An applicant may request that a criminal history records check be conducted by a state or local law enforcement agency or by a private vendor approved by the department. Fees for criminal history records checks shall be paid by the applicant to the entity processing the request at the time such request is made. The state or local law enforcement agency or private vendor shall remit payment to the center in such amount as required by the center for conducting a criminal history records check. The depart-

ment shall accept a criminal history records check whether such request is made through a state or local law enforcement agency or through a private vendor approved by the department. Upon receipt of an authorized request, the center shall promptly cause such criminal records search to be conducted. The center shall notify the department in writing of any finding of disqualifying information, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding.

(e) Conviction data received by the department or a state or local law enforcement agency shall be privileged and shall not be a public record or disclosed to any person. Conviction data shall be maintained by the department and the state or local law enforcement pursuant to laws regarding such records and the rules and regulations of the center and the Federal Bureau of Investigation. Penalties for the unauthorized release or disclosure of conviction data shall be as prescribed by law or rule or regulation of the center or Federal Bureau of Investigation.

(f) The center, the department, or any law enforcement agency, or the employees of any such entities, shall neither be responsible for the accuracy of information provided pursuant to this Code section nor be liable for defamation, invasion of privacy, negligence, or any other claim relating to or arising from the dissemination of information pursuant to this Code section. (Code 1933, § 88-3112.1, enacted by Ga. L. 1977, p. 281, § 2; Ga. L. 2001, p. 1145, § 2; Ga. L. 2011, p. 539, § 2/SB 76; Ga. L. 2012, p. 83, § 4/HB 247; Ga. L. 2013, p. 141, § 31/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "this subsection" for "this paragraph" in the first sentence of subsection (d).

31-11-53. Services which may be rendered by certified emergency medical technicians and trainees.

(a) Upon certification by the department, emergency medical technicians may do any of the following:

(1) Render first-aid and resuscitation services as taught in the United States Department of Transportation basic training courses for emergency medical technicians or an equivalent course approved by the department; and

(2) Upon the order of a duly licensed physician, administer approved intravenous solutions and opioid antagonists.

(b) While in training preparatory to becoming certified, emergency medical technician trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician or a registered nurse. (Code 1933, § 88-3112.3, enacted by Ga. L. 1977, p. 281, § 4; Ga. L. 2014, p. 683, § 2-3/HB 965.)

The 2014 amendment, effective April 24, 2014, added "and opioid antagonists" at the end of paragraph (a)(2). See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities ... without any potential for abuse ... [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-54. Services which may be rendered by paramedics and paramedic trainees.

(a) Upon certification by the department, paramedics may perform any service that a cardiac technician is permitted to perform. In addition, upon the order of a duly licensed physician and subject to the conditions set forth in paragraph (2) of subsection (a) of Code Section 31-11-55, paramedics may perform any other procedures which they have been both trained and certified to perform, including, but not limited to:

(1) Administration of parenteral injections of diuretics, anticonvulsants, hypertonic glucose, antihistamines, bronchodilators, emetics, narcotic antagonists, and others, and administration of opioid antagonists;

(2) Cardioversion; and

(3) Endotracheal suction.

(b) While in training preparatory to becoming certified, paramedic trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician, a registered nurse, or an approved paramedic clinical preceptor. (Code 1933, § 88-3112.5, enacted by Ga. L. 1977, p. 281, § 6; Ga. L. 1988, p. 1923, § 4; Ga. L. 1989, p. 1782, § 2; Ga. L. 2001, p. 1145, § 4; Ga. L. 2014, p. 683, § 2-4/HB 965.)

The 2014 amendment, effective April 24, 2014, added ", and administration of opioid antagonists" at the end of paragraph (a)(1) and substituted "Endotracheal suction" for "Gastric suction by intubation" in paragraph (a)(3). See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities ... without any potential for abuse ... [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-55. Services which may be rendered by certified cardiac technicians and trainees.

(a) Upon certification by the department, cardiac technicians may do any of the following:

(1) Render first-aid and resuscitation services;

(2) Upon the order of a duly licensed physician and as recommended by the Georgia Emergency Medical Services Advisory Council and approved by the department:

(A) Perform cardiopulmonary resuscitation and defibrillation in a hemodynamically unstable patient;

(B) Administer approved intravenous solutions;

(C) Administer parenteral injections of antiarrhythmic agents, vagolytic agents, chronotropic agents, alkalizing agents, analgesic agents, and vasopressor agents or administer opioid antagonists; and

(D) Perform pulmonary ventilation by esophageal airway and endotracheal intubation.

(b) While in training preparatory to becoming certified, cardiac technician trainees may perform any of the functions specified in this

Code section under the direct supervision of a duly licensed physician or a registered nurse. (Code 1933, § 88-3112.4, enacted by Ga. L. 1977, p. 281, § 5; Ga. L. 2001, p. 1145, § 5; Ga. L. 2014, p. 683, § 2-5/HB 965.)

The 2014 amendment, effective April 24, 2014, substituted "Georgia Emergency Medical Services" for "Emergency Health Services" in paragraph (a)(2); substituted "hemodynamically unstable" for "pulseless, nonbreathing" in subparagraph (a)(2)(A); and added "or administer opioid antagonists" in subparagraph (a)(2)(C). See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities ... without any potential for abuse ... [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-55.1. Opioid antagonists administered by first responder to save life of person experiencing opioid related overdose.

(a) As used in this Code section, the term:

(1) "First responder" means any person or agency who provides on-site care until the arrival of a duly licensed ambulance service. This shall include, but not be limited to, persons who routinely respond to calls for assistance through an affiliation with law enforcement agencies, fire departments, and rescue agencies.

(2) "Opioid antagonist" means any drug that binds to opioid receptors and blocks or inhibits the effects of opioids acting on those receptors and that is approved by the federal Food and Drug Administration for the treatment of an opioid related overdose.

(3) "Opioid related overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, result-

ing from the consumption or use of an opioid or another substance with which an opioid was combined or that a layperson would reasonably believe to be resulting from the consumption or use of an opioid or another substance with which an opioid was combined.

(b) An opioid antagonist may be administered or provided by any first responder for the purpose of saving the life of a person experiencing an opioid related overdose. In order to ensure public health and safety:

(1) All first responders who have access to or maintain an opioid antagonist obtain appropriate training as set forth in the rules and regulations of the Department of Public Health;

(2) All law enforcement agencies, fire departments, rescue agencies, and other similar entities shall notify the appropriate emergency medical services system of the possession and maintenance of opioid antagonists by its personnel; and

(3) Within a reasonable period of time, all first responders who administer or provide an opioid antagonist shall make available a printed or electronically stored report to the licensed ambulance service which transports the patient.

(c) A pharmacy licensed in this state may issue opioid antagonists to first responders for use pursuant to this Code section in the same manner and subject to the same requirements as provided in Code Section 26-4-116.

(d) Any first responder who gratuitously and in good faith renders emergency care or treatment by administering or providing an opioid antagonist shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts without gross negligence or intent to harm or as an ordinary reasonably prudent person would have acted under the same or similar circumstances, even if such individual does so without benefit of the appropriate training. This subsection includes paid persons who extend care or treatment without expectation of remuneration from the patient or victim for receiving the opioid antagonist. (Code 1981, § 31-11-55.1, enacted by Ga. L. 2014, p. 683, § 2-6/HB 965.)

Effective date. — This Code section became effective April 24, 2014. See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical As-

sociation supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities ... without any potential for abuse ... [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

CHAPTER 17A

CONTROL OF HIV

Cross references. — Child committing delinquent act constituting AIDS transmission crime including testing and reporting, § 15-11-603. Confidential nature of AIDS information, § 24-12-20. Disclosure of AIDS confidential information, § 24-12-21.

CHAPTER 22

CLINICAL LABORATORIES

Sec.

31-22-9.1. HIV tests — Who may perform test.

Cross references. — Confidential nature of AIDS information, § 24-12-20.

31-22-9.2. HIV tests — Report of positive results; counseling; violations; exception for insurance coverage; exposure of health care provider.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1.

(b) Reserved.

(c) Unless exempted under this Code section, each health care provider who orders an HIV test for any person shall do so only after counseling the person to be tested. Unless exempted under this subsection, the person to be tested shall have the opportunity to refuse the test. The provisions of this subsection shall not be required if the person is required to submit to an HIV test pursuant to Code Section 15-11-603, 17-10-15, 31-17-4.2, 31-17A-3, 42-5-52.1, or 42-9-42.1. The provisions of this subsection shall not be required if the person is a minor or incompetent and the parent or guardian thereof permits the test after compliance with this subsection. The provisions of this subsection shall not be required if the person is unconscious, temporarily incompetent, or comatose and the next of kin permits the test after compliance with this subsection. The provisions of this subsection shall not apply to emergency or life-threatening situations. The provisions of this subsection shall not apply if the physician ordering the test is of the opinion that the person to be tested is in such a medical or emotional state that disclosure of the test would be injurious to the person's health. The provisions of this subsection shall only be required prior to drawing the body fluids required for the HIV test and shall not be required for each test performed upon that fluid sample.

(d) The health care provider ordering an HIV test shall provide medically appropriate counseling to the person tested with regard to the test results. Such medically appropriate counseling shall only be required when the last confirmatory test has been completed.

(e) The criminal penalty provided in Code Section 31-22-13 shall not apply to a violation of subsection (c), (d), or (g) of this Code section. The statute of limitations for any action alleging a violation of this Code section shall be two years from the date of the alleged violation.

(f) The provisions of this Code section shall not apply to situations in which an HIV test is ordered or required in connection with insurance coverage, provided that the person to be tested or the appropriate representative of that person has agreed to have the test administered under such procedures as may be established by the Commissioner of Insurance after consultation with the Department of Community Health.

(g) Notwithstanding the other provisions of this Code section, when exposure of a health care provider to any body fluids of a patient occurs in such a manner as to create any risk that such provider might become an HIV infected person if the patient were an HIV infected person, according to current infectious disease guidelines of the Centers for Disease Control and Prevention or according to infectious disease standards of the health care facility where the exposure occurred, a

health care provider otherwise authorized to order an HIV test shall be authorized to order any HIV test on such patient and obtain the results thereof:

(1) If the patient or the patient's representative, if the patient is a minor, otherwise incompetent, or unconscious, does not refuse the test after being notified that the test is to be ordered and after having been provided counseling and an opportunity to refuse the test; or

(2) If the patient or representative refuses the test, following compliance with paragraph (1) of this subsection, when at least one other health care provider who is otherwise authorized to order an HIV test concurs in writing to the testing, the patient is informed of the results of the test and is provided counseling with regard to those results, and the occurrence of that test is not made a part of the patient's medical records, where the test results are negative, without the patient's consent. (Code 1981, § 31-22-9.2, enacted by Ga. L. 1988, p. 1799, § 8; Ga. L. 1990, p. 705, §§ 2, 3; Ga. L. 2000, p. 20, § 20; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2007, p. 173, § 2/HB 429; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2013, p. 294, § 4-43/HB 242.)

The 2013 amendment, effective January 1, 2014, substituted "Code Section 15-11-603" for "Code Section 15-11-66.1" in the third sentence of subsection (c). See editor's notes for applicability.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

CHAPTER 30

REPORTS ON VETERANS EXPOSED TO AGENT ORANGE

Delayed effective date. — Code Section 31-30-9 provides that this chapter shall become effective when and to the extent that funds are appropriated and available to the Department of Human Resources (now Department of Community Health) under an appropriation which specifically refers to this chapter and provides that it is intended for the implementation of this chapter. Funds were not appropriated at the 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005,

2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, or 2014 sessions of the General Assembly.

CHAPTER 40

TATTOO STUDIOS

31-40-1. Definitions.

RESEARCH REFERENCES

ALR. — Regulation of business of tattooing, 67 ALR6th 395.

31-40-5. Rules and regulations.

RESEARCH REFERENCES

ALR. — Regulation of business of tattooing, 67 ALR6th 395.

CHAPTER 41

LEAD POISONING PREVENTION

Article 1
General Provisions

ARTICLE 1

GENERAL PROVISIONS

31-41-3. Definitions.

As used in this chapter, the term:

(1) "Abatement" means any set of measures designed to eliminate lead-based paint hazards, in accordance with standards developed by the board, including:

(A) Removal of lead-based paint and lead contaminated dust, the permanent containment or encapsulation of lead-based paint,

the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(B) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) "Accessible surface" means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(2.1) "Board" means the Board of Natural Resources of the State of Georgia.

(2.2) "Child-occupied facility" means a building or portion of a building constructed prior to 1978, visited by the same child, six years of age or under, on at least two different days within the same week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours. Child-occupied facilities include, but are not limited to, child care learning centers, preschools, and kindergarten facilities.

(3) "Department" means the Department of Natural Resources.

(4) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(5) "Impact surface" means an interior or exterior surface or fixture that is subject to damage by repeated impacts, for example, certain parts of door frames.

(6) "Inspection" means a surface by surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(7) "Interim controls" means a measure or set of measures as specified by the board taken by the owner of a structure that are designed to control temporarily human exposure or likely exposure to lead-based paint hazards.

(8) "Lead-based paint" means paint or other surface coatings that contain lead in excess of limits established by board regulation.

(9) "Lead-based paint activities" means the inspection and assessment of lead hazards and the planning, implementation, and inspection of interim controls, renovation, and abatement activities at target housing and child-occupied facilities.

(10) "Lead-based paint hazard" means any condition that causes exposure to lead from lead contaminated dust, lead contaminated soil, or lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would

result in adverse human health effects as established pursuant to Section 403 of the Toxic Substances Control Act.

(11) "Lead contaminated dust" means surface dust in residential dwellings or in other facilities occupied or regularly used by children that contains an area or mass concentration of lead in excess of levels determined pursuant to Section 403 of the Toxic Substances Control Act.

(12) "Lead contaminated soil" means bare soil on residential real property or on other sites frequented by children that contains lead at or in excess of levels determined to be hazardous to human health pursuant to Section 403 of the Toxic Substances Control Act.

(13) "Lead contaminated waste" means any discarded material resulting from an abatement activity that fails the toxicity characteristics determined by the department.

(13.1) "Lead dust sampling technician" means an individual employed to perform lead dust clearance sampling for renovation as determined by the department.

(14) "Lead firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that employs or contracts with persons to perform lead-based paint activities.

(15) "Lead inspector" means a person who conducts inspections to determine the presence of lead-based paint or lead-based paint hazards.

(16) "Lead project designer" means a person who plans or designs abatement activities and interim controls.

(17) "Lead risk assessor" means a person who conducts on-site risk assessments of lead hazards.

(18) "Lead supervisor" means a person who supervises and conducts abatement of lead-based paint hazards.

(19) "Lead worker" means any person performing lead hazard reduction activities.

(19.1) "Minor repair and maintenance activities" means activities that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted as determined by the department are used or where the work does not involve window replacement or demolition of painted surface areas. Jobs performed in the same room within 30 days are considered the same job for purposes of this definition.

(19.2) "Renovation" means the modification of any target housing or child-occupied facility structure or portion thereof, that results in

the disturbance of painted surfaces unless that activity is performed as part of an abatement activity. Renovation includes but is not limited to the removal, modification, re-coating, or repair of painted surfaces or painted components; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building into target housing or a child-occupied facility is a renovation. Such term shall not include minor repair and maintenance activities.

(19.3) "Renovation firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity that employs or contracts with persons to perform lead-based paint renovations as determined by the department.

(19.4) "Renovator" means an individual who either performs or directs workers who perform renovations.

(20) "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in or on any structure or site, including:

(A) Information gathering regarding the age and history of the structure and the occupancy or other use by young children;

(B) Visual inspection;

(C) Limited wipe sampling or other environmental sampling techniques;

(D) Other activity as may be appropriate; and

(E) Provision of a report explaining the results of the investigation.

(21) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child or children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. (Code 1981, § 31-41-3, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1998, p. 248, § 1; Ga. L. 2010, p. 531, § 6/SB 78; Ga. L. 2013, p. 135, § 12/HB 354.)

The 2013 amendment, effective July 1, 2013, substituted "child care learning centers" for "day-care centers" in the second sentence of paragraph (2.2).

CHAPTER 49

GEORGIA COUNCIL ON LUPUS EDUCATION AND AWARENESS

Effective date. — This chapter became effective July 1, 2014.

31-49-1. Legislative findings.

The General Assembly finds and declares that it is estimated that as many as 55,000 Georgia residents suffer from lupus, a life-long autoimmune disease in which the immune system becomes unbalanced, causing inflammation, tissue damage, seizures, strokes, heart attacks, miscarriages, and organ failure. Although anyone can develop lupus, it strikes mostly women of childbearing age; African American, Hispanic, Asian, and Native American women are two to three times more likely than Caucasians to develop lupus. Lupus can be difficult to diagnose and often is misdiagnosed because the symptoms are similar to those of other illnesses. It is in the public interest for this state to establish an entity to develop and implement a comprehensive program to improve education and awareness about lupus for health care providers and the general public. (Code 1981, § 31-49-1, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-2. Creation of Council on Lupus Education and Awareness; membership; organization.

(a) There is created the Georgia Council on Lupus Education and Awareness within the Department of Community Health.

(b) The council shall consist of six members as follows:

(1) The commissioner of community health, or the commissioner's designee, as an ex officio member;

(2) Three members to be appointed by the Governor. The Governor shall appoint two members to serve for one year and one to serve for two years. Thereafter, successors to such initial appointees shall

serve for two years. Of these three members, one shall be a physician who treats patients with lupus and one shall be a lupus patient;

(3) One member to be appointed by the Speaker of the House of Representatives to serve for two years; and

(4) One member to be appointed by the Lieutenant Governor to serve for two years;

(c) All vacancies on the council shall be filled for the balance of the unexpired term in the same manner as the original appointment. A member of the council shall be eligible for reappointment.

(d) The members of the council shall serve without compensation but may be reimbursed for any expenses incurred by them in the performance of their duties, subject to the availability of funds.

(e) The council shall organize as soon as practicable after the appointment of its members and shall select a chairperson from among its members. (Code 1981, § 31-49-2, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-3. Duties and responsibilities of council.

(a) The council shall have the following duties and responsibilities:

(1) To initially investigate the level of education concerning lupus in this state; and

(2) Based on the results of its initial investigation pursuant to paragraph (1) of this Code section, to develop information on lupus endorsed by government agencies, including, but not limited to, the National Institutes of Health and the Centers for Disease Control and Prevention.

(b) The council shall develop a directory of lupus related health care services, which shall be made available on the department's website and shall include a list of health care providers specializing in the diagnosis and treatment of lupus. (Code 1981, § 31-49-3, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-4. Distribution of information.

(a) The department shall post the information developed by the council pursuant to paragraph (2) of subsection (a) of Code Section 31-49-3 on its website.

(b) Subject to appropriations or access to other private or public funds, the department may distribute such information to individuals with lupus, their family members, health care professionals, hospitals,

local health departments, schools, agencies on aging, employers, health plans, women's health groups, and nonprofit and community based organizations. (Code 1981, § 31-49-4, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-5. Annual report.

The council shall prepare annually a complete and detailed report to be submitted to the Governor, the chairperson of the House Committee on Health and Human Services, and the chairperson of the Senate Health and Human Services Committee detailing the activities of the council and may include any recommendations for legislative action it deems appropriate. (Code 1981, § 31-49-5, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-6. Donations.

The council may solicit and accept donations, gifts, grants, property, or matching funds from any public or private source for the use of the council in performing its functions under this chapter. (Code 1981, § 31-49-6, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

TITLE 32

HIGHWAYS, BRIDGES, AND FERRIES

Chap.

CHAPTER 1

GENERAL PROVISIONS

32-1-2. Purpose and legislative intent.

JUDICIAL DECISIONS

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 2014 Ga. App. LEXIS 152 (Mar. 13, 2014).

County's duty to maintain dedicated roads in subdivision. — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county's decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment was that standard articulated. Burke County v. Askin, 291 Ga. 697, 732 S.E.2d 416 (2012).

32-1-3. Definitions.

JUDICIAL DECISIONS

Unopened, undeveloped, proposed roads, etc.

County, which had accepted dedication of a subdivision road in 1962 but had not completed the road or maintained it for 50 years, due to the county's mistaken belief that the road was private, was ordered to complete and maintain the road; the coun-

ty's failure to complete the road was arbitrary and capricious, given the county's acceptance of subdivision plats requiring the road. As to unopened roads in the subdivision, the roads were not public under O.C.G.A. § 9-6-21(b), and the county had no obligation to maintain those unopened roads. Burke County v. Askin, 294 Ga. 634, 755 S.E.2d 747 (2014).

County's duty to maintain dedicated roads in subdivision. — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county's decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment was that standard articulated. Burke County v. Askin, 291 Ga. 697, 732 S.E.2d 416 (2012).

CHAPTER 2

DEPARTMENT OF TRANSPORTATION

Article 3

Officers

Sec.

32-2-41.1. Progress report and Strategic Transportation Plan.

32-2-41.2. Development of benchmarks; reports; value engineering studies.

Article 4

Exercise of Power to Contract Generally

Sec.

32-2-81. "Design-build procedure" defined; procedures for utilization; limitation on contracting; summary projects.

ARTICLE 1

GENERAL PROVISIONS

32-2-2. Powers and duties of department generally.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Negligence suit involving paving company. — Trial court erred by granting a paving company summary judgment in a negligence suit based on the affidavit of the company's president because the business records referred to and relied upon by the paving company's president were not attached to the president's affidavit; thus, the affidavit could not be used to support the company's motion for summary judgment. Brown v. Seaboard Constr. Co., 317 Ga. App. 667, 732 S.E.2d 325 (2012).

ARTICLE 3

OFFICERS

32-2-41.1. Progress report and Strategic Transportation Plan.

(a) On or before October 15, 2009, the director shall prepare a report for the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate Transportation Committee and the House Committee on Transportation, respectively, detailing the progress the division has made on preparing a State-wide Strategic Transportation Plan. The director shall deliver a draft of the plan for comments and suggestions by members of the General Assembly and the Governor on or before December 31, 2009. Comments and suggestions by the House and Senate Transportation Committees of the General Assembly and the Governor shall be submitted to the director no later than February 15, 2010. This plan shall include a list of projects realistically expected to begin construction within the next four years, the cost of such projects, and the source of funds for such projects. The plan shall be developed with consideration of investment policies addressing:

(1) Growth in private-sector employment, development of work force, and improved access to jobs;

(2) Reduction in traffic congestion;

(3) Improved efficiency and reliability of commutes in major metropolitan areas;

(4) Efficiency of freight, cargo, and goods movement;

(5) Coordination of transportation investment with development patterns in major metropolitan areas;

(6) Market driven travel demand management;

(7) Optimized capital asset management;

(8) Reduction in accidents resulting in injury and loss of life;

(9) Border-to-border and interregional connectivity; and

(10) Support for local connectivity to the state-wide transportation network.

The investment policies provided for in paragraphs (1) through (10) of this subsection shall also guide the development of the allocation formula provided for under Code Section 32-5-27 and shall expire on April 15, 2012, and every four years thereafter unless amended or renewed. The final version of the State-wide Strategic Transportation Plan shall be completed by April 10, 2010, and shall be delivered to the

Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate Transportation Committee and the House Committee on Transportation. A report detailing the progress of projects and programs in the State-wide Strategic Transportation Plan shall be prepared and delivered annually thereafter, and a revised version shall be prepared and delivered at least biennially thereafter.

(b) The report and plan prepared under subsection (a) of this Code section shall also be published on the website of the department. (Code 1981, § 32-2-41.1, enacted by Ga. L. 2008, p. 528, § 1/HB 1189; Ga. L. 2009, p. 976, § 6/SB 200; Ga. L. 2014, p. 851, § 1/HB 774.)

The 2014 amendment, effective July 1, 2014, substituted "annually" for "semi-annually" in the last sentence of the ending paragraph of subsection (a).

32-2-41.2. Development of benchmarks; reports; value engineering studies.

(a) The commissioner shall develop and publish in print or electronically benchmarks, based upon the type and scope of a construction project, that detail a realistic time frame for completion of each stage of a construction project, including preliminary engineering and design, environmental permitting and review, and right of way acquisition.

(b) The director shall submit an annual report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House and Senate Transportation Committees detailing the progress of every construction project valued at $10 million or more against the benchmarks. This report shall include an analysis explaining the discrepancies between the benchmarks and actual performance on each project as well as an explanation for delays. This report shall also be published on the website of the department.

(c) The department shall create and maintain on its website a detailed status report on each project under planning or construction. This status report shall include, but not be limited to, the name and contact information of the project manager, if applicable.

(d) Value engineering studies shall be performed on all projects whose costs exceed $50 million, except for any project procured in accordance with Code Sections 32-2-79, 32-2-80, and 32-2-81, and the director shall submit an annual report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House and Senate Transportation Committees detailing the amount saved due to the value engineering studies. This report shall also be published on the website of the department. (Code 1981, § 32-2-41.2, enacted by Ga. L. 2008, p. 806, § 1/SB 417; Ga. L.

2009, p. 976, § 7/SB 200; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 67, § 1/HB 202; Ga. L. 2014, p. 851, § 2/HB 774.)

The 2013 amendment, effective July 1, 2013, in the first sentence of subsection (d), substituted "$50 million" for "$10 million" and inserted "except for any project procured in accordance with Code Sections 32-2-79, 32-2-80, and 32-2-81,".

The 2014 amendment, effective July 1, 2014, substituted "submit an annual" for "submit a semiannual" near the beginning of the first sentence of subsection (b).

ARTICLE 4

EXERCISE OF POWER TO CONTRACT GENERALLY

32-2-61. Limitations on power to contract.

JUDICIAL DECISIONS

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 2014 Ga. App. LEXIS 152 (Mar. 13, 2014).

32-2-81. "Design-build procedure" defined; procedures for utilization; limitation on contracting; summary projects.

(a) As used in this Code section, the term "design-build procedure" means a method of contracting under which the department contracts with another party for the party to both design and build the structures, facilities, systems, and other items specified in the contract.

(b) The department may use the design-build procedure for buildings, bridges and approaches, rail corridors, technology deployments, and limited or controlled access projects or projects that may be constructed within existing rights of way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained.

(c) When the department determines that it is in the best interests of the public, the department may combine any or all of the environmental services, utility relocation services, right of way services, design services, and construction phases of a public road or other transportation purpose project into a single contract using a design-build procedure. Design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (1) of subsection (d) of Code Section 32-2-61. However, construction activities shall not begin on any portion of such projects until title to the necessary rights of way and easements

for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed.

(d) The department shall adopt by rule procedures for administering design-build contracts. Such procedures shall include, but not be limited to:

(1) Prequalification requirements;

(2) Public advertisement procedures;

(3) Request for qualification requirements;

(4) Request for proposal requirements;

(5) Criteria for evaluating technical information and project costs;

(6) Criteria for selection and award process, provided that the rules shall specify that the criteria for selection shall consist of the following minimum two components for any two-step procurement process:

(A) A statement of qualifications from which the department will determine a list of qualified firms for the project, provided that, if the department determines it is in the state's best interest, it may omit this requirement and move directly to a one-step procurement process through the issuance of a request for proposal from which the department may select the lowest qualified bidder; and

(B) From the list of qualified firms as provided in subparagraph (A) of this paragraph, a technical proposal and a price proposal from each firm from which the department shall select the lowest qualified bidder or, in the event the department uses the best value procurement process, the request for proposal shall specify the requirements necessary for the selection of the best value proposer which shall include, at a minimum, a weighted cost component and a technical component. A proposal shall only be considered nonresponsive if it does not contain all the information and level of detail requested in the request for proposal. A proposal shall not be deemed to be nonresponsive solely on the basis of minor irregularities in the proposal that do not directly affect the ability to fairly evaluate the merits of the proposal. Notwithstanding the requirements of Code Section 36-91-21, under no circumstances shall the department use a "best and final offer" standard in awarding a contract in order to induce one proposer to bid against an offer of another proposer. The department may provide for a stipulated fee to be awarded to the short list of qualified proposers who provide a responsive, successful proposal. In consideration for paying the stipulated fee, the department may use any ideas or information

contained in the proposals in connection with the contract awarded for the project, or in connection with a subsequent procurement, without obligation to pay any additional compensation to the unsuccessful proposers;

(7) Identification of those projects that the department believes are candidates for design-build contracting; and

(8) Criteria for resolution of contract issues. The department may adopt a method for resolving issues and disputes through negotiations at the project level by the program manager up to and including a dispute review board procedure with final review by the commissioner or his or her designee. Regardless of the status or disposition of the issue or dispute, the design-builder and the department shall continue to perform their contractual responsibilities. The department shall have the authority to suspend or provide for the suspension of Section 108 of the department's standard specifications pending final resolution of such contract issues and disputes. This paragraph shall not prevent an aggrieved party from seeking judicial review.

(e) In contracting for design-build projects, the department shall be limited to contracting for no more than 50 percent of the total amount of construction projects awarded in the previous fiscal year.

(f) Not later than 90 days after the end of the fiscal year, the department shall provide to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and chairpersons of the House and Senate Transportation Committees a summary containing all the projects awarded during the fiscal year using the design-build contracting method. Included in the report shall be an explanation for projects awarded to other than the low bid proposal. This report shall be made available for public information. (Code 1981, § 32-2-81, enacted by Ga. L. 2004, p. 905, § 2; Ga. L. 2005, p. 950, § 1/HB 530; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2010, p. 396, § 1/SB 305; Ga. L. 2012, p. 1343, § 4/HB 817; Ga. L. 2013, p. 68, § 1/SB 70.)

The 2013 amendment, effective July 1, 2013, in subsection (a), inserted "systems," near the end; in subsection (b), inserted "technology deployments," near the middle; in subsection (c), inserted "utility relocation services," in the first sentence and substituted "activities shall" for "activities may" in the third sentence; deleted former paragraph (d)(3), which read: "Scope of service requirements;"; redesignated former paragraphs (d)(4) through (d)(9) as present paragraphs (d)(3) through (d)(8), respectively; in paragraph (d)(3), substituted "Request for qualification requirements" for "Letters of interest requirements"; rewrote paragraph (d)(4); added "for any two-step procurement process" at the end of paragraph (d)(6); added the proviso in subparagraph (d)(6)(A); rewrote subparagraph (d)(6)(B); in paragraph (d)(7), deleted ", with the understanding that in general this type of contract should have minimal right of way or utility issues which are unresolved; provided, however, the failure of the department to identify such projects does not prevent the department from using design-build contracting in extraordinary

circumstances including emergency work, unscheduled projects, or where loss of funding might occur" following "contracting"; in paragraph (d)(8), substituted "paragraph shall" for "paragraph does" in the last sentence; deleted former subsection (e); redesignated former subsections (f) and (g) as present subsections (e) and (f), respectively; and substituted "chairpersons" for "chairmen" in the first sentence of subsection (f).

CHAPTER 3

ACQUISITION OF PROPERTY FOR TRANSPORTATION PURPOSES

ARTICLE 1

GENERAL PROVISIONS

32-3-1. Authority to acquire property for present or future public road or other transportation purposes.

JUDICIAL DECISIONS

ANALYSIS

AUTHORITY TO CONDEMN

Authority to Condemn

So long as general public not excluded from road, power of eminent domain could be exercised. — Trial court properly denied a condemnee's petition to set aside a declaration of taking filed by a county under O.C.G.A. § 32-3-1 because the road at issue was open for use by the general public despite only a few private citizens most likely using the road; but, so long as the general public was not excluded, the power of eminent domain could be exercised. Emery v. Chattooga County, 325 Ga. App. 587, 753 S.E.2d 149 (2014).

32-3-11. Power of judge to set aside, vacate, and annul declaration of taking; issuance and service on condemnor of rule nisi; hearing.

Law reviews. — For annual survey on real property, see 64 Mercer L. Rev. 255 (2012).

JUDICIAL DECISIONS

Application of 60-day requirement. — Pursuant to the clear language of O.C.G.A. § 32-3-11(c), it is the duty of the court, not the condemnee, to issue a rule nisi and schedule the required hearing. The Supreme Court of Georgia disapproves of the portion of Lopez-Aponte v. City of Columbus, 267 Ga. App. 65 (2004), which places the burden of issuing a rule nisi and obtaining a timely hearing upon the condemnee. Adkins v. Cobb County, 291 Ga. 521, 731 S.E.2d 665 (2012).

Petition to set aside properly denied. — Trial court properly denied a condemnee's petition to set aside a declaration of taking filed by a county under O.C.G.A. § 32-3-1 because the road at issue was open for use by the general public despite only a few private citizens most likely using the road, but so long as the general public was not excluded, the power of eminent domain could be exercised. Emery v. Chattooga County, 325 Ga. App. 587, 753 S.E.2d 149 (2014).

CHAPTER 4

STATE, COUNTY, AND MUNICIPAL ROAD SYSTEMS

Article 3

County Road Systems

Part 2

Exercise by Counties of Power to Contract Generally

Sec.

32-4-63. Limitations on power to contract; at least two estimates required for certain expenditures.

Article 4

Municipal Street Systems

Part 2

Exercise by Municipalities of Power to Contract Generally

Sec.

32-4-113. Limitations on power to contract; at least two estimates required for certain expenditures.

ARTICLE 3

COUNTY ROAD SYSTEMS

Part 1

General Powers and Duties of Counties

32-4-41. Duties.

JUDICIAL DECISIONS

Judicial review of abandonment decision. — In a mandamus action, a trial court erred by reversing a decision of a county board of commissioners to abandon a road as the trial court failed to give proper deference to the board's decision to abandon the road and substituted the court's own judgment for that of the board. Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013).

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 2014 Ga. App. LEXIS 152 (Mar. 13, 2014).

Duty to maintain dedicated roads in subdivision. — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain

roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county's decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment was that standard articulated. Burke County v. Askin, 291 Ga. 697, 732 S.E.2d 416 (2012).

County, which had accepted dedication of a subdivision road in 1962 but had not completed the road or maintained the road for 50 years, due to the county's mistaken belief that the road was private, was ordered to complete and maintain the road; the county's failure to complete the road was arbitrary and capricious, given the county's acceptance of subdivision plats requiring the road. As to unopened roads in the subdivision, the roads were not public under O.C.G.A. § 9-6-21(b), and the county had no obligation to maintain those roads. Burke County v. Askin, 294 Ga. 634, 755 S.E.2d 747 (2014).

Part 2

Exercise by Counties of Power to Contract Generally

32-4-63. Limitations on power to contract; at least two estimates required for certain expenditures.

(a) A county is prohibited from negotiating a contract except a contract:

(1) Involving the expenditure of less than $200,000.00;

(2) With a state agency or county or municipality with which a county is authorized to contract in accordance with the provisions of Code Sections 32-4-61 and 32-4-62;

(3) For the purchase of those materials, supplies, and equipment necessary for the county's construction and maintenance of its public roads and for the support and maintenance of the county's forces used in such work, as authorized by Chapter 91 of Title 36;

(4) Subject to Article 6 of Chapter 6 of this title, with a railroad or railway company or a publicly or privately owned utility concerning relocation of its line, tracks, or facilities where the same are not then located in a public road and such relocation or grade-crossing elimination is necessary as an incident to the construction of a new public road or to the reconstruction or maintenance of an existing public road. Nothing contained in this paragraph shall be construed as requiring a county to furnish a site or right of way for railroad or railway lines or tracks of public utility facilities required to be removed from a public road;

(5) For engineering or other kinds of professional or specialized services;

(6) For emergency maintenance requiring immediate repairs to a public road, including but not limited to bridge repairs, snow and ice removal, and repairs due to flood conditions; or

(7) Otherwise expressly authorized by law.

(b) No contract involving an expenditure of more than $20,000.00 but less than $200,000.00 shall be awarded under this Code section without the submission of at least two estimates. (Code 1933, § 95A-819, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1989, p. 356, § 2; Ga. L. 2000, p. 498, § 9; Ga. L. 2014, p. 851, § 3/HB 774.)

The 2014 amendment, effective July 1, 2014, designated the existing provisions of this Code section as subsection (a); substituted "$200,000.00" for "$20,000.00" in paragraph (a)(1); and added subsection (b).

ARTICLE 4

MUNICIPAL STREET SYSTEMS

Part 1

General Powers and Duties of Municipality

32-4-91. Construction and maintenance of systems; acquisition of labor; maximum bridge weight; notification of department about new streets and abandoned streets.

JUDICIAL DECISIONS

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 2014 Ga. App. LEXIS 152 (Mar. 13, 2014).

32-4-93. Liability of municipalities for defects in public roads.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

O.C.G.A. § 32-4-93(a) applies to sidewalks and constructive notice of a defect may be imputed through the knowledge of the city's employees or agents, or may be shown by testimony as to how long the defect existed prior to the injury, objective evidence that the defect existed over time, or evidence that others were injured as a result of the same condition over a period of years. Clark v. City of Atlanta, 322 Ga. App. 151, 744 S.E.2d 122 (2013).

Constructive notice of uneven sidewalk pavers. — Trial court erred by granting a city summary judgment in a pedestrian's negligence suit seeking damages for a slip and fall on uneven sidewalk pavers because the evidence showed that the uneven and defective condition existed at least seven months prior to the fall;

thus, a genuine issue of fact existed as to whether the city had constructive notice. Clark v. City of Atlanta, 322 Ga. App. 151, 744 S.E.2d 122 (2013).

No evidence of city liability. — Trial court did not err by dismissing a pedestrian's slip and fall claims against a city because there was no evidence that the city owned any part of the sidewalk and no evidence that the city performed any maintenance, repairs, or renovations to the sidewalk; thus, the pedestrian presented no evidence to support the contention that the city had or breached a duty to maintain the sidewalk. Hagan v. Ga. DOT, 321 Ga. App. 472, 739 S.E.2d 123 (2013).

Part 2

Exercise by Municipalities of Power to Contract Generally

32-4-113. Limitations on power to contract; at least two estimates required for certain expenditures.

(a) A municipality is prohibited from negotiating a contract except a contract:

(1) Involving the expenditure of less than $200,000.00;

(2) With a state agency or political subdivision as authorized by Code Sections 32-4-111 and 32-4-112;

(3) With a railroad or railway company or a publicly or privately owned utility as authorized by Article 6 of Chapter 6 of this title;

(4) For engineering or other kinds of professional or specialized services;

(5) For emergency maintenance requiring immediate repairs to a public road, including but not limited to bridge repairs, snow and ice removal, and repairs due to flood conditions; or

(6) Otherwise expressly authorized by law.

(b) No contract involving an expenditure of more than $20,000.00 but less than $200,000.00 shall be awarded under this Code section without the submission of at least two estimates. (Code 1933, § 95A-834, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1989, p. 356, § 3; Ga. L. 2014, p. 851, § 4/HB 774.)

The 2014 amendment, effective July 1, 2014, designated the existing provisions of this Code section as subsection (a); substituted "$200,000.00" for "$20,000.00" in paragraph (a)(1); and added subsection (b).

CHAPTER 5

FUNDS FOR PUBLIC ROADS

Article 3
Allocation of Funds

ARTICLE 3

ALLOCATION OF FUNDS

32-5-30. Allocation of state and federal funds; items excluded from budgeting; budgeting periods; authorization of reduction of funds allocated.

(a)(1) The total of expenditures from the State Public Transportation Fund under paragraphs (4), (5), and (6) of Code Section 32-5-21 plus expenditures of federal funds appropriated to the department shall be budgeted by the department over two successive budgeting periods every decade. However, such budgeting shall not include:

(A) Any federal funds specifically designated for projects that have been earmarked by a member of Congress in excess of appropriated funds;

(B) Any funds for a project undertaken for purposes of providing for the planning, surveying, constructing, paving, and improving of The Dwight D. Eisenhower System of Interstate and Defense Highways within the state; or

(C) Any funds for a project undertaken for purposes of providing for the planning, surveying, constructing, paving, and improving of any part of the state designated freight corridor, when such designation is made by the director of planning with approval from a majority of the board.

(2) The first budgeting period shall commence immediately following redistricting of congressional districts and shall be for a duration of five years. The second budgeting period shall continue until the beginning of the budgeting period following the next redistricting of congressional districts after each decennial census; provided, however, if the congressional districts have been redrawn prior to a new decennial census, but after the approval of an existing map based on the last decennial census, the budgeting period shall include two successive budgeting periods. The first budgeting period shall end upon approval of the new redistricting and the second budgeting

period shall commence from the date such redrawn congressional districts have been approved and shall continue until the next budgeting period following the next redistricting of congressional districts. The department shall budget such expenditures such that at the end of such budgeting period funding obligations equivalent to at least 80 percent of such total for such budgeting period shall have been divided equally among the congressional districts in this state, as those districts existed at the commencement of such budgeting period, for public road and other public transportation purposes in such districts.

(b)(1) The board may upon approval by two-thirds of its membership authorize a reduction in the share of funds allocated pursuant to this Code section to any such congressional district if such supermajority of the board determines that such district does not have sufficient projects available for expenditure of funds within that district to avoid lapsing of appropriated funds.

(2) In the event that funding becomes available to the department which could not otherwise be allocated among congressional districts due to the allocation requirements of this Code section, the board may upon approval by a majority of its membership authorize a waiver of such allocation requirements to the extent necessary to allow the expenditure of such funding, and any project, projects, or portion thereof undertaken with such additional funding shall be in addition to those projects funded in accordance with the allocation requirements of this Code section in the fiscal year in which the additional funds became available or any subsequent year; provided, however, that any such waiver shall be valid only for the fiscal year in which it is granted, and any funds budgeted pursuant to a waiver granted by this paragraph which were not obligated by the end of such fiscal year shall not be obligated in violation of the allocation requirements of this Code section in a subsequent fiscal year unless a majority of the board again authorizes a waiver of the allocation requirements in such subsequent fiscal year.

(c) Provisions of this Code section may be waived pursuant to subsection (b) of Code Section 32-5-1 only upon approval by two-thirds of the membership of the board. (Code 1981, § 32-5-30, enacted by Ga. L. 1999, p. 112, § 2; Ga. L. 2000, p. 1483, § 1; Ga. L. 2001, p. 4, § 32; Ga. L. 2002, p. 1490, § 1; Ga. L. 2005, p. 724, § 1/SB 4; Ga. L. 2006, p. 72, § 32/SB 465; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2013, p. 67, § 2/HB 202.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of paragraph (a)(1) for the former provisions, which read: "The total of expenditures from the State Public Transportation Fund under paragraphs (4), (5), and (6) of Code Section 32-5-21 plus expenditures of federal funds appropriated

to the department, not including any federal funds specifically designated for projects that have been earmarked by a member of Congress in excess of appropriated funds, shall be budgeted by the department over two successive budgeting periods every decade."

CHAPTER 6

REGULATION OF MAINTENANCE AND USE OF PUBLIC ROADS GENERALLY

ARTICLE 1

GENERAL PROVISIONS

32-6-5. Closure of or limiting access to roads due to declared state of emergency for inclement weather conditions; exception for certain vehicle operators.

(a) The department may close or limit access to any portion of road on the state highway system due to a declared state of emergency for inclement weather conditions that results in dangerous driving conditions. There shall be erected or posted signage of adequate size indicating that a portion of the state highway system has been closed or access has been limited. When the department determines a road shall have limited access due to a declared state of emergency for inclement winter weather conditions, notice shall be given to motorists through posted signage that motor vehicles must be equipped with tire chains, four-wheel drive with adequate tires for existing conditions, or snow tires with a manufacturer's all weather rating in order to proceed. Such signage shall inform motorists that it shall be unlawful to proceed on such road without such equipment. With the exception of buses, operators of commercial motor vehicles as defined by Code Section 40-1-1 with four or more drive wheels traveling on a road declared as limited access due to a declared state of emergency for inclement winter weather conditions shall affix tire chains to each of the outermost drive wheel tires. Bus and motor coach operators shall affix tire chains to at least two of the drive wheel tires before proceeding on a road with

limited access due to a declared state of emergency for inclement winter weather conditions. For purposes of this Code section, the term "tire chains" means metal chains which consist of two circular metal loops, positioned on each side of a tire, connected by not less than nine evenly spaced chains across the tire tread or any other traction devices as provided for by rules and regulations of the commissioner of public safety.

(b) A driver of a motor vehicle who causes an accident or blocks the flow of traffic while failing to comply with the requirements of subsection (a) of this Code section when access is limited on the state highway system due to a declared state of emergency for inclement weather conditions shall be fined up to $1,000.00.

(c) This Code section shall not apply to a tow operator towing a motor vehicle or traveling to a site from which a motor vehicle shall be towed or to emergency responders traveling the roadway in order to fulfill their duties. (Code 1981, § 32-6-5, enacted by Ga. L. 2012, p. 1343, § 6/HB 817; Ga. L. 2014, p. 807, § 1/HB 753.)

The 2014 amendment, effective July 1, 2014, rewrote subsection (a); added subsection (b); and redesignated former subsection (b) as present subsection (c).

ARTICLE 2

DIMENSIONS AND WEIGHT OF VEHICLES AND LOADS

32-6-28. Permits for excess weight and dimensions.

(a) **Generally.**

(1)(A) The commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefor, issue a permit in writing authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles and loads whose weight, width, length, or height, or combination thereof, exceeds the maximum limit specified by law, provided that the load transported by such vehicle or vehicles is of such nature that it is a unit which cannot be readily dismantled or separated; and provided, further, that no permit shall be issued to any vehicle whose operation upon the public roads of this state threatens to unduly damage a road or any appurtenance thereto, except that the dismantling limitation specified in this Code section shall not apply to loads which consist of cotton, tobacco, concrete pipe, and plywood that do not exceed a width of nine feet or of round bales of hay that do not exceed a width of 11 feet and which are not moved on part of The Dwight D. Eisenhower System of Interstate and Defense Highways. However, vehicles transport-

ing portable buildings and vehicles not exceeding 65 feet in length transporting boats on roads not a part of The Dwight D. Eisenhower System of Interstate and Defense Highways, regardless of whether the nature of such buildings or boats is such that they can be readily dismantled or separated, may exceed the lengths and widths established in this article, provided that a special permit for such purposes has been issued as provided in this Code section, but no such special permit shall be issued for a load exceeding 12 feet in width when such load may be readily dismantled or separated. A truck tractor and low boy type trailer may, after depositing its permitted load, return to its point of origin on the authorization of its original permit.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefor, issue to a specific tow vehicle a permit in writing authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles and loads for transporting not more than two modular housing units or sectional housing units if the total weight, width, length, and height of the vehicle or combination of vehicles, including the load, does not exceed the limits specified in Code Sections 32-6-22 and 32-6-26. Permission to transport two modular housing units is only authorized when the modular unit transporter meets the minimum specifications contained in subparagraph (C) of this paragraph. No permit shall be issued to any vehicle or combination of vehicles whose operation upon the public roads of this state threatens the safety of others or threatens to damage unduly a road or any appurtenance thereto.

(C) A modular unit transporter shall meet all requirements of the Federal Motor Carrier Safety Administration and all state safety requirements, rules, and regulations. The modular unit transporter shall be properly registered and have a proper, current license plate. At a minimum, the modular unit transporter shall:

(i) Be constructed of 12 inch steel I beams doubled and welded together;

(ii) Have all axles equipped with brakes;

(iii) Have every floor joist on each modular section securely attached to the beams with lag bolts and washers, or lag bolts, washers, and cable winches; and

(iv) Have an overall length not to exceed 80 feet including the hitch.

(2) Permits may be issued, on application to the department, to persons, firms, or corporations without specifying license plate num-

bers in order that such permits which are issued on an annual basis may be interchanged from vehicle to vehicle. The department is authorized to promulgate reasonable rules and regulations which are necessary or desirable to govern the issuance of such permits, provided that such rules and regulations are not in conflict with this title or other provisions of law.

(3) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer, state trooper, or authorized agent of the department.

(4) The application for any such permit shall describe the type of permit applied for, as said types of permits are described in subsection (c) of this Code section. In addition, the application for a single-trip permit shall describe the points of departure and destination.

(5) The commissioner or an official of the department designated by the commissioner is authorized to withhold such permit or, if such permit is issued, to establish seasonal or other time limitations within which the vehicles described may be operated on the public road indicated, or otherwise to limit or prescribe conditions of operation of such vehicles when necessary to ensure against undue damage to the road foundation, surfaces, or bridge structures, and to require such undertaking or other security as may be deemed necessary to compensate the state for any injury to any roadway or bridge structure.

(6) For just cause, including, but not limited to, repeated and consistent past violations, the commissioner or an official of the department designated by the commissioner may refuse to issue or may cancel, suspend, or revoke the permit and any permit privileges of an applicant or permittee. The specific period of time of any suspension shall be determined by the department. In addition, any time the restrictions or conditions within which a permitted vehicle must be operated are violated, the permit may be immediately declared null and void.

(7) The department is authorized to promulgate rules and regulations necessary to enforce the suspension of permits authorized in this Code section.

(8) The department shall issue rules to establish a driver training and certification program for drivers of vehicles escorting oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet the training requirements and obtain certification under the rules issued by the department pursuant to this Code section. The rules may provide for reciprocity with other

states having a similar program for escort certification. Certification credentials of the driver of an escort vehicle shall be carried in the escort vehicle and be readily available for inspection by law enforcement personnel or an authorized employee of the department. The department shall implement the vehicle escort driver training and certification program on or before July 1, 2010, and the requirements for training and certification shall be enforced beginning on January 1, 2011.

(9) Permit holders shall be required to meet the following minimum insurance standards:

(A) For loads where the gross vehicle weight is less than or equal to 10,000 pounds:

(i) For bodily injury a limit of $50,000.00 per person for injury or death as a result of any one occurrence; and

(ii) For property damage a limit of $50,000.00 for damage to property of others in any one occurrence; or

(B) For commercial motor carriers where the gross vehicle weight is greater than 10,000 pounds:

(i) For bodily injury a minimum of $300,000.00 for each person and $1 million for multiple persons for injury or death as a result of any one occurrence; and

(ii) For property damage a minimum of $1 million for damage to property of others in any one occurrence.

(b) **Duration and limits of permits.**

(1) **Annual permit.** The commissioner or an official of the department designated by the commissioner may, pursuant to this Code section, issue an annual permit which shall permit a vehicle to be operated on the public roads of this state for 12 months from the date the permit is issued even though the vehicle or its load exceeds the maximum limits specified in this article. However, except as specified in paragraph (2) of this subsection, an annual permit shall not authorize the operation of a vehicle:

(A) Whose total gross weight exceeds 100,000 pounds;

(B) Whose single axle weight exceeds 25,000 pounds;

(C) Whose total load length exceeds 100 feet;

(D) Whose total width exceeds 102 inches or whose load width exceeds 144 inches; or

(E) Whose height exceeds 14 feet and six inches.

(2) **Annual permit plus.** Vehicles and loads that meet the requirements for an annual permit may apply for a special annual permit to carry wider loads on the NHS. The wider load limits shall be a maximum of 14 feet wide from the base of the load to a point 10 feet above the pavement and 14 feet and eight inches for the upper portion of the load.

(3) **Annual commercial wrecker emergency tow permit.** Pursuant to this Code section, the commissioner may issue an annual permit for vehicles towing disabled, damaged, abandoned, or wrecked commercial vehicles, including combination vehicles, even though such wrecker or its load exceeds the maximum limits specified in this article. An annual commercial wrecker emergency tow permit shall not authorize the operation of a vehicle:

(A) Whose single axle weight exceeds 25,000 pounds;

(B) Whose load on one tandem axle exceeds 50,000 pounds and whose load on any secondary tandem axle exceeds 38,000 pounds; or

(C) Whose total load length exceeds 125 feet.

(4) **Six-month permit.** Six-month permits may be issued for loads of tobacco or unginned cotton the widths of which do not exceed nine feet, provided that such loads shall not be operated on The Dwight D. Eisenhower System of Interstate and Defense Highways.

(5) **Single trip.** Pursuant to this Code section, the commissioner may issue a single-trip permit to any vehicle or load allowed by federal law.

(6) **Multitrip.** Pursuant to this Code section, the commissioner may issue a multitrip permit to any vehicle or load allowed by federal law. A multitrip permit authorizes the permitted load to return to its original destination on the same permit, if done so within ten days, with the same vehicle configuration, and following the same route, unless otherwise specified by the department. A multitrip permit authorizes unlimited permitted loads on the same permit, if done so within the allowable ten days, with the same vehicle configuration, and following the same route.

(c) **Fees.** The department may promulgate rules and regulations concerning the issuance of permits and charge a fee for the issuance thereof as follows:

(1) **Annual.** Charges for the issuance of annual permits shall be $150.00 per permit.

(2) **Annual permit plus.** Charges for the issuance of annual permits plus shall be $500.00 per permit.

(3) **Annual commercial wrecker emergency tow permit.** Charges for the issuance of annual commercial wrecker emergency tow permits shall be $500.00 per permit.

(4) **Six months.** The charges for the issuance of six-month permits for loads of tobacco or unginned cotton shall be $25.00 per permit.

(5) **Single trip.** Charges for the issuance of single-trip permits shall be as follows:

(A) Any load not greater than 16 feet wide, not greater than 16 feet high, and not weighing more than 150,000 pounds or any load greater than 100 feet long which does not exceed the maximum width, height, and weight limits specified by this subparagraph ..... $ 30.00

(B) **Superload permit.** Any load having a width, height, or weight exceeding the maximum limit therefor specified in subparagraph (A) of this paragraph and not weighing more than 180,000 pounds 125.00

(C) **Superload plus permit.** Any load having a weight exceeding the maximum limit therefor specified in subparagraph (B) of this paragraph 500.00

(6) **Multitrip.** Charges for the issuance of multitrip permits shall be $100.00 for any load not greater than 16 feet wide, not greater than 16 feet high, and not weighing more than 150,000 pounds or any load greater than 100 feet long which does not exceed the maximum width, height, and weight limits specified by this paragraph.

(d) Notwithstanding any provision of Code Section 48-2-17 to the contrary, all fees collected in accordance with this Code section shall be paid to the treasurer of the department to help defray the expenses of enforcing the limitations set forth in this article and may also be used for public road maintenance purposes in addition to any sums appropriated therefor to the department. (Ga. L. 1968, p. 30, § 1; Ga. L. 1969, p. 637, § 1; Ga. L. 1971, p. 43, § 1; Ga. L. 1971, p. 462, §§ 2, 3; Ga. L. 1972, p. 356, §§ 1, 2; Code 1933, § 95A-961, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 38; Ga. L. 1975, p. 400, § 1; Ga. L. 1979, p. 439, § 4; Ga. L. 1980, p. 576, § 7; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 1798, § 5; Ga. L. 1986, p. 471, §§ 1-3; Ga. L. 1986, p. 655, § 1; Ga. L. 1987, p. 846, § 1; Ga. L. 1992, p. 987, § 1; Ga. L. 1992, p. 2467, §§ 2-4; Ga. L. 1993, p. 348, § 1; Ga. L. 1995, p. 10, § 32; Ga. L. 1995, p. 155, § 1; Ga. L. 1996, p. 1010, § 3; Ga. L. 1996, p. 1512, § 3A; Ga. L. 1999, p. 567, § 3; Ga. L. 2000, p. 136, § 32; Ga. L. 2000, p. 1654, § 2; Ga. L. 2002, p. 1126, §§ 5, 6; Ga. L. 2010, p. 442, § 3/HB 1174; Ga. L. 2011, p. 548, §§ 3, 4/SB 54; Ga. L. 2012, p. 732, § 1/HB 835; Ga. L. 2012, p. 775, § 32/HB 942; Ga. L. 2013, p. 738, § 1/SB 218.)

The 2013 amendment, effective July 1, 2013, in the introductory language of paragraph (b)(3), inserted "abandoned," and inserted ", including combination vehicles," in the first sentence, and substituted "An annual" for "However, an annual" at the beginning of the second sentence; substituted "25,000 pounds" for "21,000 pounds" in subparagraph (b)(3)(A); and substituted "one tandem axle exceeds 50,000 pounds and whose load on any secondary tandem axle exceeds 38,000 pounds" for "any tandem axle exceeds 40,000 pounds" in subparagraph (b)(3)(B).

ARTICLE 3

CONTROL OF SIGNS AND SIGNALS

Part 1

Public Roads Generally

32-6-50. Uniform regulations governing erection and maintenance of traffic-control devices; placement, removal, defacement, damaging, or sale of devices.

JUDICIAL DECISIONS

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 2014 Ga. App. LEXIS 152 (Mar. 13, 2014).

Part 2

State Highway System

32-6-70. Declaration of policy.

Law reviews. — For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

32-6-75. Restrictions on outdoor advertising authorized by Code Sections 32-6-72 and 32-6-73; multiple message signs on interstate system, primary highways, and other highways.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

32-6-75.3. Application for tree trimming permit and annual renewal; forms; application fees; evaluation; criteria for trimming trees or vegetation.

JUDICIAL DECISIONS

Constitutionality. — In a city's suit challenging vegetation removal around billboard advertising, the Supreme Court of Georgia upheld the constitutionality of the billboard advertising statute, O.C.G.A. § 32-6-75.3 because the Georgia legislature has found that outdoor advertising provides a substantial service and benefit to the traveling public. City of Columbus v. Ga. Dep't of Transp., 292 Ga. 878, 742 S.E.2d 728 (2013).

Billboard advertising statute constitutional. — Trial court properly determined that the billboard advertising statute, O.C.G.A. § 32-6-75.3(j), did not violate the trustees clause because the trustees clause did not apply because the city's challenges to the statute did not involve a public officer reaping personal financial gain at the expense of the public. City of Columbus v. Ga. Dep't of Transp., 292 Ga. 878, 742 S.E.2d 728 (2013).

Take down credits for removal of billboards. — Trial court erred in holding that the take-down credits under O.C.G.A. § 32-6-75.3(j) violated the gratuities clause because, to the contrary, the Supreme Court of Georgia has found that the Georgia legislature has explicitly determined that removal of outdated signs provides a benefit to the State of Georgia and that there would be a financial benefit in allowing take-down credits. City of Columbus v. Ga. Dep't of Transp., 292 Ga. 878, 742 S.E.2d 728 (2013).

CHAPTER 7

ABANDONMENT, DISPOSAL, OR LEASING OF PROPERTY NOT NEEDED FOR PUBLIC ROAD PURPOSES

32-7-1. Authority of department, counties, and municipalities to substitute for, relocate, or abandon public roads.

JUDICIAL DECISIONS

Judicial review of abandonment decision. — In a mandamus action, a trial court erred by reversing a decision of a county board of commissioners to abandon a road as the trial court failed to give proper deference to the board's decision to abandon the road and substituted the court's own judgment for that of the board. Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013).

32-7-2. Procedure for abandonment.

JUDICIAL DECISIONS

Distinction between abandonment and failure to maintain. — Standard of review on appeal with respect to a mandamus order involving the superior court's review of a county's decision to abandon a public road pursuant to O.C.G.A.

§ 32-7-2(b)(1) is whether there is any evidence supporting the decision of the local governing body, not whether there is any evidence supporting the decision of the superior court. This standard is not applicable if the issue on appeal involves the county's failure to properly build, repair, and maintain county roads. Burke County v. Askin, 294 Ga. 634, 755 S.E.2d 747 (2014).

Judicial review of abandonment decision. — In a mandamus action, a trial court erred by reversing a decision of a county board of commissioners to abandon a road as the trial court failed to give proper deference to the board's decision to abandon the road and substituted the court's own judgment for that of the board. Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013).

32-7-3. Authority of department, counties, and municipalities to dispose of property no longer needed for public road purposes.

JUDICIAL DECISIONS

Application. — Trial court properly granted summary judgment to a county and purchaser, because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. Hubert Props., LLP v. Cobb County, 318 Ga. App. 321, 733 S.E.2d 373 (2012).

32-7-4. Procedure for disposition of property.

JUDICIAL DECISIONS

Application. — Trial court properly granted summary judgment to a county and purchaser because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. Hubert Props., LLP v. Cobb County, 318 Ga. App. 321, 733 S.E.2d 373 (2012).

CHAPTER 9

MASS TRANSPORTATION

32-9-8.1. Installation of safety markers on utility lines to provide for adequate visual warning in use of private airstrips; definitions; powers and duties of department.

(a) As used in this Code section, the term:

(1) "Appurtenant utility line" means an above ground electrical power line or nonelectrical cable or wire that penetrates a 20:1 approach slope as measured from the runway threshold at either end of the private airstrip.

(2) "Installation fee schedule" means a listing of fees necessary to purchase and install safety markers as determined by the department.

(3) "Private airstrip" means a privately owned landing strip for airplanes, gliders, or helicopters for personal or private use that is not open to the general public and not subject to the provisions of Code Section 32-9-8.

(4) "Safety marker" means a highly visible object or device affixed to an appurtenant utility line which alerts operators of aircraft to the existence of the appurtenant utility line.

(b) Any owner of a private airstrip may make a written notice, either by certified mail or statutory overnight delivery, return receipt requested, to an owner of an appurtenant utility line requesting the installation of safety markers. Such notice shall be accompanied by a check or money order in the amount of $100.00 made payable to the owner of the appurtenant utility line for the work to be performed by the owner of the appurtenant utility line under paragraphs (1) and (2) of this subsection. Within 90 days of the owner of an appurtenant utility line's receipt of such written notice, the owner of the appurtenant utility line shall:

(1) Determine the appropriate type, number, and location of safety markers to be installed on the appurtenant utility line which will provide adequate visual warning to the flying public of the close proximity of the appurtenant utility lines to the private airstrip;

(2) Determine the installation fee costs for the installation of such safety markers based on the installation fee schedule developed by the department; and

(3) Provide notice to the owner of the private airstrip as to the type, number, location, and installation fee of the requisite safety markers.

The owner of the appurtenant utility line shall file a request for review pursuant to subsection (e) of this Code section if such owner is unable

to comply or anticipates being unable to comply with this subsection for any reason, including but not limited to the time provided for responding to the owner of the private airstrip, the time provided for installation, or the fees set in the installation fee schedule.

(c) The owner of the private airstrip shall have 90 days from the receipt of notice under paragraph (3) of subsection (b) of this Code section to:

(1) Remit to the owner of the appurtenant utility line the full amount of the installation fee;

(2) File a request for review pursuant to subsection (e) of this Code section; or

(3) Provide written notice to the owner of the appurtenant utility line of his or her decision not to pursue the installation of the safety markers. If the owner of the private airstrip provides such written notice or does not take any action under paragraph (1) or (2) of this subsection, the owner of the appurtenant utility line shall have no further obligation under this Code section; provided, however, that this paragraph shall not be construed to prohibit the owner of the private airstrip from sending written notice pursuant to subsection (b) of this Code section to the same owner of an appurtenant utility line in any subsequent calendar year so long as the owner of the private airstrip does not exceed one written notice to the same owner of an appurtenant utility line in any calendar year.

(d) If the owner of the private airstrip pays the full amount of the installation fee under paragraph (1) of subsection (c) of this Code section, the owner of the appurtenant utility line shall have 90 days from receipt of payment to purchase the safety markers and complete the installation. The owner of the appurtenant utility line shall file a request for review pursuant to subsection (e) of this Code section and may be granted up to two extensions of time not to exceed 90 days total upon a showing that the need for an extension is the result of force majeure, grid reliability, work scheduling conflicts, or the lack of market supply of the requisite safety markers and other necessary equipment.

(e) If any owner of an appurtenant utility line fails to comply with any provision of this Code section or any owner of an appurtenant utility line anticipates an inability to comply with any provision of this Code section, then an order enforcing this Code section or granting an exception may be sought from the department. Either party may file with the department a written request for review of the matter. Any such request for review shall be accompanied by a filing fee of $50.00 and shall include any documents or forms required by the department. A copy of such request for review shall be served upon the other party

by certified mail or statutory overnight delivery, return receipt requested. The department shall within 30 days after the filing of such request investigate the matter and issue an order either requiring the owner of the appurtenant utility line to take such action as is necessary for purposes of compliance with this Code section or grant an exception to the owner of the appurtenant utility line as to time for compliance or a deviation from the installation fee schedule of the department. Copies of any such order of the department shall be served upon all parties by certified mail or statutory overnight delivery, return receipt requested. The department shall keep detailed records of its costs of investigation and review for purposes of this subsection, and such records shall be subject to public inspection as provided by Article 4 of Chapter 18 of Title 50.

(f) If any owner of an appurtenant utility line fails to comply with any order of the department under subsection (e) of this Code section within 15 days after receipt of such order, then after notice and opportunity for a hearing, such owner of an appurtenant utility line shall be subject to a civil penalty in the amount of $1,000.00 per day beginning 15 days after the date of receipt of the order of the department until the owner of the appurtenant utility line has complied with the order of the department; provided, however, that the department may grant an extension of time for compliance without penalty upon a showing that the owner of the appurtenant utility line's failure to timely comply was due to force majeure. Any fine under this subsection shall be tolled for the period from the filing of a petition for a judicial review and shall be subject to judicial review in such manner as is provided by law for judicial review of contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," until the rendering of a final decision.

(g) The department shall promulgate such rules and regulations as are necessary to implement the provisions of this Code section, including, but not limited to, the promulgation of rules and regulations to establish installation fee schedules based on utility best practices.

(h) An owner of a private airstrip shall have immunity from any civil liability that would otherwise be incurred or imposed as a result of taking or failing to take any action pursuant to this Code section. This Code section shall not be construed as imposing any additional duty on an owner of a private airstrip which is not already otherwise imposed by law. (Code 1981, § 32-9-8.1, enacted by Ga. L. 2014, p. 825, § 1/HB 494.)

Effective date. — This Code section became effective April 29, 2014, for purposes of proposing rules and regulations and effective for all other purposes on October 1, 2014.

32-9-13 and 32-9-14.

Repealed by Ga. L. 2014, p. 649, § 1/HB 265, effective June 1, 2014.

Editor's notes. — These Code sections were based on Ga. L. 2010, p. 778, § 3/HB 277; Ga. L. 2012, p. 775, § 32/HB 942.

Ga. L. 2014, p. 649, § 3/HB 265 provides: "This Act shall become effective on June 1, 2014, only if an Act providing for the suspension of restrictions on the use of annual proceeds from sales and use taxes by the Metropolitan Atlanta Rapid Transit Authority and reconstituting the board of directors of the Metropolitan Atlanta Rapid Transit Authority is enacted at the 2014 regular session of the General Assembly. Otherwise, all provisions of this Act shall not become effective and shall stand repealed on June 1, 2014." The contingency was satisfied by the enactment of HB 264 at Ga. L. 2014, p. 634.